

No. 15724 ✓

---

United States  
Court of Appeals  
for the Ninth Circuit

---

FRED C. NIEDERKROME, E. ROYCE, DORA  
F. ROYCE, EZRA ROYCE, B. ROYCE,  
ESTATE OF ISABELLE H. ROYCE, DE-  
CEASED, B. Royce, Executor, ROBERT T.  
JACOB, AGNES C. JACOB, ALBERT L.  
SCHNEIDER and BERTHA SCHNEIDER,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

---

Transcript of Record  
In Two Volumes  
VOLUME I.  
(Pages 1 to 312, inclusive)

---

Petitions to Review Decisions of The Tax  
Court of the United States

FILED

DEC 11 1957



No. 15724

---

---

United States  
Court of Appeals  
for the Ninth Circuit

---

FRED C. NIEDERKROME, E. ROYCE, DORA  
F. ROYCE, EZRA ROYCE, B. ROYCE,  
ESTATE OF ISABELLE H. ROYCE, DE-  
CEASED, B. Royce, Executor, ROBERT T.  
JACOB, AGNES C. JACOB, ALBERT L.  
SCHNEIDER and BERTHA SCHNEIDER,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

---

Transcript of Record  
In Two Volumes  
VOLUME I.  
(Pages 1 to 312, inclusive)

---

Petitions to Review Decisions of The Tax  
Court of the United States

---

---



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answers to Petitions for Redetermination of Deficiency:	
Docket No. 51491.....	28
Docket No. 51526.....	56
Docket No. 51527.....	103
Docket No. 51528.....	146
Docket No. 51529.....	177
Docket No. 51531.....	191
Docket No. 51533.....	207
Certificate of Clerk to Transcript of Record...	312
Decisions:	
Docket No. 51491.....	296
Docket No. 51526.....	297
Docket No. 51527.....	298
Docket No. 51528.....	299
Docket No. 51529.....	300
Docket No. 51531.....	301
Docket No. 51533.....	302
Designation of Contents of Record of Printing (USCA) .....	629

## Docket Entries:

Docket No. 51491.....	3
Docket No. 51526.....	6
Docket No. 51527.....	10
Docket No. 51528.....	10
Docket No. 51529.....	14
Docket No. 51531.....	15
Docket No. 51533.....	18
Memorandum Findings of Fact and Opinions..	216
General Findings of Fact.....	220
Issue 1—Findings of Fact.....	221
Opinion .....	236
Issue 2—Findings of Fact.....	244
Opinion .....	256
Issue 3—Findings of Fact.....	257
Opinion .....	261
Issue 4—Findings of Fact.....	263
Opinion .....	276
Issue 5—Findings of Fact.....	278
Opinion .....	286
Issue 6—Findings of Fact.....	289
Opinion .....	293
Names and Addresses of Counsel.....	1
Petition for Redetermination of Deficiency (51491) .....	18
Exhibit A—Notice of Deficiency.....	22
Petition for Redetermination of Deficiency (51526) .....	30
Exhibit A—Notice of Deficiency.....	40

Petition for Redetermination of Deficiency (51527) .....	59
Exhibit A—Notice of Deficiency.....	76
Petition for Redetermination of Deficiency (51528) .....	114
Exhibit A—Notice of Deficiency.....	124
Petition for Redetermination of Deficiency (51529) .....	149
Exhibit A—Notice of Deficiency.....	159
Petition for Redetermination of Deficiency (51531) .....	179
Exhibit A—Notice of Deficiency.....	185
Petition for Redetermination of Deficiency (51533) .....	193
Exhibit A—Notice of Deficiency.....	198
Petitions for Review:	
Docket No. 51491.....	303
Docket No. 51526.....	304
Docket No. 51527.....	305
Docket No. 51528.....	307
Docket No. 51529.....	308
Docket No. 51531.....	309
Docket No. 51533.....	310
Reply to Answer to Petition for Redetermination (51527) .....	112
Statement of Points on Which Petitioners In- tend to Rely (USCA).....	626

Stipulation of Facts (51491, 51526-9, 51531, 51533-Portion) .....	209
Stipulation of Facts, Supplemental (51526-7) .....	214
Stipulation That Exhibits Be Considered in Original Form (USCA).....	628
Transcript of Proceedings and Testimony.....	313
Witnesses for Petitioners:	
Dodge, Eunice Royce	
—direct .....	555
—cross .....	557
—redirect .....	561
—recross .....	562
Jacob, Robert T.	
—direct .....	314
—cross .....	335, 346
Niederkrome, F. C.	
—direct .....	347
—cross .....	352, 356
—recalled, direct .....	491, 509
—cross .....	517
—redirect .....	526
—recross .....	527
—rebuttal, direct .....	621
—cross .....	623
—redirect .....	623
Royce, B.	
—direct .....	563
—cross .....	567

## Transcript of Proceedings—(Continued):

## Witnesses for Petitioners—(Continued):

## Royce, Dora F.

—direct .....	527
—cross .....	542
—redirect .....	554
—recalled, direct .....	570

## Royce, Ezra

—direct .....	386
—cross .....	398
—redirect .....	410, 412
—recross .....	411, 421
—re-redirect .....	427, 484
—re-recross .....	449, 460, 487
—recalled, direct .....	568
—cross .....	569

## Schneider, A. L.

—direct .....	361
—cross .....	375
—rebuttal, direct .....	624

## Wenck, August

—direct .....	615
---------------	-----

## Witnesses for Respondent:

## Amos, Robert D.

—direct .....	577
—cross .....	602

## Nicholson, Donald D.

—direct .....	609
---------------	-----

## Transcript of Proceedings—(Continued):

## Witnesses for Respondent—(Continued):

Orsen, Fannie

—direct .....	571
—cross .....	577

Royce, E.

—recalled, cross .....	610
------------------------	-----

## NAMES AND ADDRESSES OF COUNSEL

LOUIS EISENSTEIN,  
1614 Eye Street, N. W.,  
Washington 6, D. C.,

RANDALL S. JONES,  
Public Service Building,  
Portland 4, Oregon,

EBERHARD P. DEUTSCH,  
Hibernia Bank Building,  
New Orleans 12, Louisiana,

Counsel for Petitioners.

CHARLES K. RICE,  
Assistant Attorney General,

LEE A. JACKSON,  
Attorney,  
Department of Justice,  
Washington 25, D. C.,

Counsel for Respondent.



The Tax Court of the United States

Docket No. 51491

FRED C. NIEDERKROME, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1953

Dec. 15—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 17—Copy of petition served on General Counsel.

Dec. 15—Request for Circuit hearing in Portland, Oregon filed by taxpayer. 12/30/53, granted.

1954

Feb. 15—Answer to petition filed by General Counsel.

Feb. 16—Copy of answer served on taxpayer, Portland.

1955

Feb. 15—Hearing set May 9, 1955, Portland, Oregon.

May 12, Hearing had before Judge Van Fossan on 14, the merits. Petitioner's oral motion to 16—consolidate dockets 51491, 51526 to 51529, incl., 51531, 51533—no objection by respondent—granted; petitioner's oral mo-

1955 (Con't.)

tion to file stipulation of facts later with respect to specific issues — granted, and stipulation of the parties to take deposition — granted — to be taken within ten days. Entry of appearance of Randall S. Jones, Esq. and Stipulation of Facts with Exhibits 1 through 13, B through T, attached, Exhibits A later attached to stipulation, filed at hearing. Petitioner's Brief, 7/15/55; respondent's brief, 8/29/55; petitioner's reply, 9/28/55.

May 23—Motion for leave to withdraw the original of each subpoena Mrs. Fannie Orsen et al. filed by General Counsel.

Jun. 1—Respondent's motion of 5/23/55 is granted.

Jun. 2—Motion to withdraw exhibits 12, 13, 16, 19, 22, 23, 24, 27 and 32 to 44, incl., filed by taxpayer. 6/3/55, granted.

Jun. 9—Transcript of Hearing 5/12/55 filed.

Jun. 9—Transcript of Hearing 5/14/55 filed.

Jun. 9—Transcript of Hearing 5/16/55 filed.

Jul. 5—Motion for extension to 8/15/55 to file brief filed by taxpayer. 7/5/55, granted.

Aug. 15—Brief filed by taxpayer. Copy served.

Sep. 6—Motion for leave to file settlement stipulation in respect of certain issues, stipulation relative to disposition of certain issues lodged, filed. 9-7-55, granted.

Sep. 26—Motion for extension to Oct. 31, 1955 to file brief and November 30, 1955 to file

Sep. 26—petitioner's reply brief filed by General (Con't). Counsel. 9/27/55, granted.

Oct. 25—Joint motion for extension to Nov. 18, 1955 to file respondent's brief and to Dec. 30, 1955 to file petitioner's reply brief filed. 10/26/55, granted.

Nov. 18—Brief filed by respondent. Served 11/21/55.

Dec. 23—Motion for extension to Jan. 30, 1956 to file reply brief filed by petitioner. 12/28/55, granted.

### 1956

Jan. 30—Reply brief filed by taxpayer.(1)—2 copies rec'd. 1/31/56. 1/31/56, served.

Nov. 16—Memorandum findings of fact and opinion filed. Van Fossan J. Decision will be entered under Rule 50. Served 11/16/56.

### 1957

Mar. 27—Agreed computation filed.

Apr. 2—Decision entered, Judge Van Fossan. Served 4/3/57.

May 10—Motion for permission to withdraw exhibits filed by petitioner. Served 5/17/57. Granted 5/14/57.

Jul. 1—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by petitioner.

Jul. 1—Proof of service filed.

Jul. 1—Petition for review by U. S. Court of Appeals, Fifth Circuit, with assignments of error filed by petitioner.

Jul. 1—Proof of service filed.

1957

- Jul. 8—Entry of appearance of Louis Eisenstein, as counsel, filed.
- Aug. 7—Designation of record on review filed by petitioner (9th Circuit) with acknowledgment of service thereon.
- Aug. 7—Order extending time for filing record on review and docketing petition for review to Sept. 29, 1957, entered (9th Circuit). Served 8/8/57.

---

The Tax Court of the United States

Docket No. 51526

E. ROYCE AND DORA F. ROYCE,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1953

- Dec. 21—Petition received and filed. Taxpayer notified. Fee paid.
- Dec. 22—Copy of petition served on General Counsel.
- Dec. 21—Request for Circuit hearing in Portland, Oregon filed by taxpayer. 1/5/54, granted.

1954

- Feb. 23—Answer filed by General Counsel.
- Feb. 24—Copy of answer served on taxpayer, Portland, Oregon.

1954

- Apr. 5—Motion for better statement filed by taxpayer. 4/16/54, copy served.
- Apr. 6—Hearing set May 5, 1954, Washington, D. C. on petitioner's motion. 4/6/54, copy served.
- Apr. 26—Motion to withdraw motion for a better statement of Pleadings filed Apr. 6, 1954, filed by taxpayer. 4/26/54, granted.

1955

- Feb. 15—Hearing set May 9, 1955, Portland, Oregon.
- May 12, Hearing had before Judge Van Fossan on 14, the merits. Petitioner's oral motion to 16—consolidate dockets 51491, 51526 to 51529 incl., 51531, 51533—no objection by respondent—granted; petitioner's oral motion to file stipulation of facts later with respect to specific issues—granted, and stipulation of the parties to take deposition—granted—to be taken within ten days. Entry of appearance of Randall S. Jones, Esq. and Stipulation of facts with Exhibits 1 through 13, B through T, attached, Exhibit A later attached to stipulation, filed at hearing. Petitioner's brief, 7/15/55; respondent's brief, 8/29/55; petitioner's reply, 9/28/55.
- May 23—Motion for leave to withdraw the original of each subpoena of Mrs. Fannie Orsen et al. filed by General Counsel. 6/1/55, granted.

1955

- May 25—Joint motion for leave to file supplemental stipulation of facts in lieu of deposition, supplemental stipulation of facts lodged, filed.
- Jun. 1—Joint motion for leave to file supplemental stipulation of facts in lieu of deposition granted. Supplemental stipulation of facts filed.
- Jun. 2—Motion to withdraw exhibits 12, 13, 16, 19, 22, 23, 24, 27 and 32 to 44, incl., filed by taxpayer. 6/3/55, granted.
- Jun. 9—Transcript of Hearing 5/12/55 filed.
- Jun. 9—Transcript of Hearing 5/14/55 filed.
- Jun. 9—Transcript of Hearing 5/16/55 filed.
- Jul. 5—Motion for extension to 8/15/55 to file brief filed by taxpayer. 7/5/55, granted.
- Aug. 15—Brief filed by taxpayer. Copy served.
- Sep. 6—Motion for leave to file settlement stipulations in respect of certain issues, stipulation relative to disposition of certain issues lodged, filed. 9/7/55, granted.
- Sep. 26—Motion for extension to Oct. 31, 1955 to file brief and November 30, 1955 to file petitioner's reply brief filed by General Counsel. 9/27/55, granted.
- Oct. 25—Joint motion for extension to Nov. 18, 1955 to file respondent's brief and to Dec. 30, 1955 to file petitioner's reply brief filed. 10/26/55, granted.
- Nov. 18—Brief filed by respondent. Served 11/21/55.

1955

Dec. 23—Motion for extension to Jan. 30, 1956 to file reply brief filed by petitioner.  
12/28/55, granted.

1956

Jan. 30—Reply brief filed by taxpayer. (Copies served 1/31/56.)

Nov. 16—Memorandum findings of fact and opinion filed. Van Fossan J. Decision will be entered under Rule 50. Served 11/16/56.

1957

Mar. 27—Agreed Computation filed.

Apr. 2—Decision entered, Judge Van Fossan.  
Served 4/3/57.

May 10—Motion to withdraw exhibits filed by petitioner. Granted 5/14/57. Served 5/17/57.

Jul. 1—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by petitioner.

Jul. 1—Proof of service filed.

Jul. 1—Petition for review by U. S. Court of Appeals, Fifth Circuit, with assignments of error filed by petitioner.

Jul. 1—Proof of service filed.

Jul. 8—Entry of appearance of Louis Eisenstein, as counsel filed.

Aug. 7—Designation of Record on review filed by petitioners. (9th Circuit.)

Aug. 7—Order extending time for filing record on review and docketing petition for review to September 29, 1957, entered. (9th Circuit.) Served 8/8/57.

## The Tax Court of the United States

Docket No. 51527

EZRA ROYCE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

[Note: Docket Entries in Docket No. 51527  
are the same as Docket Entries in No. 51526  
set out at pages 6-9 except the following]:

1953

May 21—Granted leave to file; Reply to Answer  
filed by taxpayer.

---

## The Tax Court of the United States

Docket No. 51528

B. ROYCE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1953

Dec. 21—Petition received and filed. Taxpayer no-  
tified. Fee paid.  
Dec. 22—Copy of petition served on General Coun-  
sel.

1953

Dec. 21—Request for Circuit hearing in Portland, Oregon filed by taxpayer. 1/5/54, granted.

1954

Feb. 23—Answer filed by General Counsel.

Feb. 24—Copy of answer served on taxpayer, Portland, Oregon.

Apr. 5—Motion for a better statement filed by taxpayer. 4/6/54, copy served.

Apr. 6—Hearing set May 5, 1954, Washington, D. C. on petitioner's motion. Copy served 4/6/54.

Apr. 26—Motion to withdraw motion for a better statement of Pleadings filed April 6, 1954 filed by taxpayer. 4/26/54, granted.

1955

Feb. 15—Hearing set May 9, 1955, Portland, Oregon.

May 12, Hearing had before Judge Van Fossan on 14, the merits. Petitioner's oral motion to 16—consolidate dockets 51491, 51526 to 51529, incl., 51531, 51533—no objection by respondent—granted; petitioner's oral motion to file stipulation of facts later with respect to specific issues—granted, and stipulation of the parties to take deposition—granted—to be taken within ten days. Entry of appearance of Randall S. Jones, Esq. and Stipulation of Facts with Exhibits 1 through 13, B through T, attached, Exhibit A later attached to stipulation, filed at hearing. Petitioner's Brief,

1955

- (Cont.) 7/15/55; respondent's brief, 8/29/55; petitioner's reply, 9/28/55.
- May 23—Motion for leave to withdraw the original of each subpoena of Mrs. Fannie Orsen et al. filed by General Counsel. 6/1/55, granted.
- Jun. 2—Motion to withdraw exhibits 12, 13, 16, 19, 22, 23, 24, 27, and 32 to 44, incl. filed by taxpayer. 6/3/55, granted.
- Jun. 9—Transcript of Hearing 5/12/55 filed.
- Jun. 9—Transcript of Hearing 5/14/55 filed.
- Jun. 9—Transcript of Hearing 5/16/55 filed.
- Jul. 5—Motion for extension to 8/15/55 to file brief filed by taxpayer. 7/5/55, granted.
- Aug. 15—Brief filed by taxpayer. Copy served.
- Sep. 6—Motion for leave to file settlement stipulation in respect of certain issues, stipulation relative to disposition of certain issues lodged, filed. 9/7/55, granted.
- Sep. 26—Motion for extension to Oct. 31, 1955 to file brief and Nov. 30, 1955 to file petitioner's reply brief filed by General Counsel. 9/27/55, granted.
- Oct. 25—Joint motion for extension to Nov. 18, 1955 to file respondent's brief and December 30, 1955 to file petitioner's reply brief filed. 10/26/55, granted.
- Nov. 18—Brief filed by respondent. Served 11/21/55.
- Dec. 23—Motion for extension to Jan. 30, 1956 to file reply brief filed by petitioner. 12/28/55, granted.

**1956**

Jan. 30—Reply brief filed by taxpayer. 1/31/56, served.

Nov. 16—Memorandum findings of fact and opinion filed. Van Fossan J. Decision will be entered under Rule 50. Served 11/16/56.

**1957**

Mar. 27—Agreed Computation filed.

Apr. 2—Decision entered, Judge Van Fossan. Served 4/3/57.

May 10—Motion to withdraw exhibits filed by petitioner. Granted 5/14/57. Served 5/17/57.

Jul. 1—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by petitioner.

Jul. 1—Proof of service filed.

Jul. 1—Petition for review by U. S. Court of Appeals, Fifth Circuit, with assignments of error filed by petitioner.

Jul. 1—Proof of service filed.

Jul. 8—Entry of appearance of Louis Eisenstein, as counsel filed.

Aug. 7—Designation of record on review filed by petitioner. (9th Circuit.)

Aug. 7—Order extending time for filing record on review and docketing petition for review to September 29, 1957, entered. (9th Circuit.) Served 8/8/57.

The Tax Court of the United States

Docket No. 51529

ESTATE OF ISABELLE H. ROYCE, DE-  
CEASED, B. ROYCE, EXECUTOR,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

[Note: Docket Entries in Docket No. 51529  
are the same as Docket No. 51528 set out at  
pages 10-13 except the following]:

1953

Dec. 21—Request for Circuit Hearing in Portland,  
Oregon filed by taxpayer.

1954

Feb. 23—Request for hearing in Portland filed by  
General Counsel.

The Tax Court of the United States

Docket No. 51531

ROBERT T. JACOB AND AGNES C. JACOB,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1953

- Dec. 21—Petition received and filed. Taxpayer notified. Fee paid.  
Dec. 22—Copy of petition served on General Counsel.  
Dec. 21—Request for Circuit hearing in Portland, Oregon filed by taxpayer. 1/6/54, granted.

1954

- Feb. 23—Answer filed by General Counsel.  
Feb. 24—Copy of answer served on taxpayer, Portland, Oregon.

1955

- Feb. 15—Hearing set May 9, 1955, Portland, Oregon.  
May 12 Hearing had before Judge Van Fossan on  
14 the merits. Petitioner's oral motion to con-  
16—solidate dockets 51491, 51526 to 51529, incl.,  
51531, 51533—no objection by respondent—  
granted; petitioner's oral motion to file  
stipulation of facts later with respect to  
specific issues—granted—and stipulation

1955

- (Con't). of the parties to take deposition—granted  
—to be taken within ten days. Entry of  
appearance of Randall S. Jones, Esq. and  
stipulation of facts with exhibits 1 thru 13,  
B thru T, attached, Exhibit A later at-  
tached to stipulation, filed at hearing. Peti-  
tioner's Brief, 7/15/55; respondent's brief,  
8/29/55; petitioner's reply brief, 9/28/55.
- May 23—Motion for leave to withdraw the original  
of each subpoena of Mrs. Fannie Orsen et  
al filed by General Counsel. Granted 6/1/55.
- Jun. 2—Motion to withdraw exhibits 12, 13, 16, 19,  
22, 23, 24, 27 and 32 to 44 incl., filed by  
taxpayer. 6/3/55, granted.
- Jun. 9—Transcript of Hearing 5/12/55 filed.
- Jun. 9—Transcript of Hearing 5/14/55 filed.
- Jun. 9—Transcript of Hearing 5/16/55 filed.
- July 5—Motion for extension to Aug. 15, 1955 to  
file brief filed by taxpayer. 7/5/55, granted.
- Aug. 15—Brief filed by taxpayer. Copy served.
- Sep. 6—Motion for leave to file settlement stipula-  
tion in respect of certain issues, stipulation  
relative to disposition of certain issues  
lodged, filed. 9/7/55, granted.
- Sep. 26—Motion for extension to Oct. 31, 1955 to  
file brief and to Nov. 30, 1955 to file peti-  
tioner's reply brief filed by General Coun-  
sel. 9/27/55, granted.
- Oct. 25—Joint motion for extension to Nov. 18, 1955  
to file respondent's brief and December 30,

1955

Oct. 25—1955 to file petitioner's reply brief filed. (Con't). 10/26/55, granted.

Nov. 18—Brief filed by respondent. Served 11/21/55.

Dec. 23—Motion for extension to Jan. 30, 1956 to file reply brief filed by petitioner. 12/28/55, granted.

1956

Jan. 30—Reply brief filed by taxpayer. 1/31/56, served.

Nov. 16—Memorandum findings of fact and opinion filed. Van Fossan J. Decision will be entered under Rule 50. Served 11/16/56.

1957

Mar. 27—Agreed Computation filed.

Apr. 2—Decision entered. Judge Van Fossan. Served 4/3/57.

May 10—Motion for permission to withdraw exhibits filed by petitioner. Granted 5/14/57. Served 5/17/57.

July 1—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by petitioners.

July 1—Proof of service of petition for review filed.

July 1—Petition for review by U. S. Court of Appeals, Fifth Circuit, with assignments of error filed by petitioners.

July 1—Proof of service filed.

July 8—Entry of appearance of Louis Eisenstein as counsel filed.

Aug. 7—Designation of record on review filed by petitioners. (9th Circuit)

1957

Aug. 7—Order extending time for filing record on review and docketing petition for review to September 29, 1957, entered. (9th Circuit)  
Served 8/8/57.

---

## The Tax Court of the United States

## DOCKET ENTRIES

Docket No. 51533

[Note: Docket Entries in No. 51533 are the same as No. 51531 set out at pages 15-18].

---

[Title of Tax Court and Docket No. 51491.]

## PETITION

The above named petitioner hereby petitions the above entitled Court for a redetermination of the deficiency set forth by the respondent in his Notice of Deficiency bearing symbols ARC-Ap:SF Port:-VEV:90D dated the 28th day of September, 1953, and as a basis of his proceeding alleges as follows:

## I.

The petitioner is an individual residing in Portland, Oregon, and the return for the period here involved was filed with the Collector of Internal Revenue at Portland, Oregon.

## II.

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on September 28, 1953.

### III.

The within controversy involves a deficiency in Federal income taxes and penalty determined by the Commissioner for the year and in the amounts as follows:

Year	Deficiency	Penalty Under Section 294(d)(2)
1945	\$32,348.48	\$1,940.07

The entire amounts of tax and penalty are in controversy.

### IV.

In arriving at his conclusion set forth in his Notice of Deficiency, the respondent committed the following errors:

(1) Respondent erred in including in petitioner's income the sum of \$48,125.00, or any sum whatsoever, as dividends from Oregon Motor Stages.

(2) The respondent further erred in including in petitioner's income the sum of \$1,141.91, or any sum whatsoever, as an additional distribution (Oregon Motor Stages) or on any account whatsoever.

(3) The respondent further erred in asserting a penalty of \$1,940.07, or any sum whatsoever, under the provisions of Section 294(d)(2), or any other section of Internal Revenue Code.

### V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(a) During the taxable year 1945, petitioner was married and living with his wife at Portland, Oregon.

(b) During the year 1945, E. Royce, B. Royce and

others, entered into negotiations with the then stock-holders of Oregon Motor Stages for the acquisition of the capital stock of said corporation. There were outstanding at that time 750 shares of common stock of said corporation and the price upon which negotiations were based was \$1,000.00 per share. E. Royce, B. Royce, Albert L. Schneider, R. T. Jacob and petitioner began preparations for the acquisition of said stock, whereupon one L. R. Bentson of Vancouver, B. C., who was a relative of E. and B. Royce, informed the said group that he desired to acquire a portion of the stock of said company and he agreed to and did purchase 350 shares of its stock.

(c) Mr. Bentson advised said group that his funds were in Canada and were blocked and that it would be necessary for him to make arrangements in the United States to finance his purchase. Thereupon a loan was negotiated on his behalf with the Portland Branch of the American Business Credit Corporation. The stock of petitioner was, as an accommodation, pledged with Mr. Bentson's stock as security for said loan, but petitioner did not participate in the negotiation of said loan and assumed no obligation whatsoever for its payment.

(d) After the conclusion of World War II in August, 1945, Mr. Bentson voiced his apprehension that the earnings of Oregon Motor Stages would be drastically curtailed and that the investment would not prove as profitable as he had anticipated at the time of his purchase. Mr. Bentson then made an offer to the corporation, which the corporation ac-

cepted, to surrender his 350 shares of stock upon the corporation paying the interest on his obligation and liquidating the loan obtained by him from the said Branch of the American Business Credit Corporation. Upon the surrender of his shares of stock, Oregon Motor Stages issued to him a check for the sum of \$350,000.00 which said check Mr. Bentson delivered to American Business Credit Corporation in payment of his said loan.

(e) Petitioner received no part of said payment of said loan either directly, indirectly or constructively, nor did petitioner receive any benefit directly, indirectly or constructively from the payment of said sum to the said Mr. Bentson.

(f) Subsequent to petitioner's purchase of said stock in Oregon Motor Stages, petitioner was required by direction of the Interstate Commerce Commission, because of his connections with other carriers engaged in interstate commerce, to dispose of his stock in said Oregon Motor Stages, and petitioner sold his said stock on June 20, 1946, to A. L. Schneider for the sum of \$55,000.00, the exact amount paid by him for said shares of stock in 1945.

(g) The facts as set forth in paragraph (b) through paragraph (f) above apply with equal force and effect to the item of \$1,141.91 included by respondent in petitioner's income as an "additional distribution (Oregon Motor Stages)".

(h) On petitioner's estimated tax, 1040 ES, for the year 1945, the full amount of tax estimated to be due and owing was reported and accordingly the penalty proposed is without foundation.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that there is no deficiency in income taxes for the year 1945, and that petitioner is not subject to any penalty determined by the Commissioner, or any part thereof.

/s/ R. T. JACOB,  
Attorney for Petitioner.

Of Counsel:

Jacob, Jones & Brown.

Duly Verified.

#### EXHIBIT "A"

U. S. Treasury Department  
Office of the Regional Commissioner  
Internal Revenue Service  
1112 Cascade Building  
Portland 4, Oregon  
September 28, 1953

InReplying Refer To: ARC-Ap:SF Port:VEV:-  
90D

Mr. Fred C. Niederkrome,  
4810 S. W. 60th Place,  
Portland, Oregon.

Dear Mr. Niederkrome:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1945, discloses a deficiency in the amount of \$32,348.48, and \$1,940.07 in penalty, as shown in the statement attached.

In accordance with the provisions of existing in-

ternal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,  
Commissioner.

By /s/ A. N. Williams,  
Associate Chief, Appellate Division.

Enclosures: Statement Form 1276 Agreement Form  
870.

ARC-Ap:SF

Port:VEV:90D STATEMENT

Mr. Fred C. Niederkrome

4810 S. W. 60th Place, Portland, Oregon

Income tax liability for the taxable year ended December 31, 1945.

Year	Deficiency	Penalty
		Section 294(d)(2)
1945	\$32,348.48	\$1,940.07

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated February 6, 1951, and to your protest dated August 16, 1951.

The 6% penalty for substantial underestimate of estimated tax has been asserted in accordance with the provisions of Section 294(d)(2) of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Robert T. Jacob, 917 Public Service Building, Portland, Oregon, in accordance with the authority contained in the power of attorney executed by you.

## Taxable Year Ended December 31, 1945

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$12,466.09
Unallowable deductions and additional income:	

(a) Dividends (Oregon Motor Stages).... \$48,125.00

(b) Additional distribution (Oregon

Motor Stages) .....	1,141.91	49,266.91
---------------------	----------	-----------

Total .....	\$61,733.00
-------------	-------------

Non-taxable income and additional deductions:

(c) Interest expense .....	1,028.43
----------------------------	----------

Net income adjusted .....	\$60,704.57
---------------------------	-------------

### Explanation of Adjustments

(a) The records of this office show that prior to July 2, 1945, you, E. Royce, B. Royce, Robert T. Jacob and A. L. Schneider negotiated for the purchase of the capital stock of Oregon Motor Stages, Portland, Oregon, an Oregon corporation engaged in the business of bus transportation. The outstanding stock of that corporation then consisted of 750 common shares, with a par value of \$100.00 per share.

As a result of the negotiations referred to above, on or about July 2, 1945, you and your associates purchased shares of Oregon Motor Stages in the number and at the cost shown below:

	Shares	Cost
E. Royce .....	145	\$145,000.00
B. Royce .....	50	50,000.00
Robert T. Jacob.....	100	100,000.00
Fred C. Niederkrome .....	55	55,000.00
A. L. Schneider.....	50	50,000.00
 Total .....	 400	 \$400,000.00

In accordance with the plan adopted, the remaining 350 shares of Oregon Motor Stages stock were acquired in the name of L. R. Bentson, 411 E. 15th Street, North Vancouver, B.C., an uncle of E. Royce and B. Royce, in consideration of payment of \$350,000.00 cash. Such payment was made from the proceeds of a loan obtained by E. Royce acting for you, himself and your above-named associates, through the Portland Branch of the American Business Credit Corporation, New York City, on a 90-day note which was signed by E. Royce and

L. R. Bentson, and which was collateralized by deposit of the entire 750 shares of stock of Oregon Motor Stages.

On or about September 6, 1945, pursuant to the plan adopted by you and your associates, as aforesaid, Oregon Motor Stages acquired the 350 shares of its own stock then standing in the name of L. R. Bentson and issued its check to him in the sum of \$350,000.00. This check was immediately endorsed and delivered to the American Business Credit Corporation in satisfaction of the 90-day note signed by E. Royce and L. R. Bentson.

It has been determined that it was not intended that L. R. Bentson should acquire, nor did he at any time acquire, any bona fide or actual beneficial interest in the stock of Oregon Motor Stages.

It has been further determined that the accumulated earnings and profits of Oregon Motor Stages available for distribution as dividends during the year 1945 were in excess of \$350,000.00.

This office holds that the transaction whereby Oregon Motor Stages acquired 350 shares of its capital stock, which were issued in the name of L. R. Bentson, for the sum of \$350,000.00, was consummated at such a time and in such a manner as to result in the realization of taxable income to you in the amount of \$48,125.00, such sum being that portion of the total sum of \$350,000.00 which 55 shares of stock of Oregon Motor Stages owned by you bears to the total of 400 shares of such stock owned by you, E. Royce, B. Royce, Robert T. Jacob and A. L. Schneider.

(b) It has been further determined that in connection with the transaction whereby Oregon Motor Stages acquired 350 shares of its stock in the manner stated above, that corporation paid interest to the American Business Credit Corporation and attorney fees in the respective total amounts of \$8,054.80 and \$2,135.41. With respect to these sums, this office holds that to the extent of \$1,107.54 and \$34.37, respectively, payment of interest and attorney fees was in satisfaction of your personal liability incurred in connection with the transactions whereby you acquired the stock of Oregon Motor Stages. Your reported income has, therefore, been increased by \$1,141.91.

(c) It has been determined that of the amount of \$1,107.54 heretofore held under item (b) above to be taxable to you, the sum of \$1,028.43 is allowable as a deduction for interest paid in 1945.

Computation of Income Tax—1945

Net income adjusted.....	\$60,704.57
Less: Normal tax exemption.....	500.00
Balance subject to normal tax.....	\$60,204.57
Normal tax—3% of \$60,204.57.....	1,806.14
Net income adjusted.....	\$60,704.57
Less: Surtax exemption.....	1,000.00
Balance subject to surtax.....	\$59,704.57
Surtax .....	\$34,098.43
Income tax liability.....	\$35,904.57
Income tax liability disclosed by return, Account No. 9080946.....	3,556.09
Deficiency in income tax.....	\$32,348.48

Penalty, Section 294(d)(2), Internal Revenue Code	
Income tax liability as adjusted.....	\$35,904.57
Less: withholding tax .....	\$ 389.90
paid on estimated declaration.....	3,180.10     3,570.00
 Difference .....	\$32,334.57
Penalty (6% of \$32,334.57).....	1,940.07

[Endorsed]: T.C.U.S. Dec. 15, 1953.

[Title of Tax Court and Docket No. 51491.]

## ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph I of the petition.
  2. Admits the allegations contained in paragraph II of the petition.
  3. Admits the allegations contained in paragraph III of the petition.
  4. Denies that he erred in his determination of the deficiency in income tax and penalty as shown by the notice of deficiency from which the appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.
  5. (a) Admits the allegations contained in paragraph V(a) of the petition.  
(b) Admits the allegations contained in the first two sentences of paragraph V(b) of the petition.

Denies the remaining allegations contained in paragraph V(b) of the petition.

(c) Denies the allegations contained in paragraph V(c) of the petition. Alleges that the nature of the stock transaction including the acquisition, payment and disposition of the remaining 350 shares of Oregon Motor Stages stock was as explained on pages 1 to 3, inclusive, of Exhibit A attached to the petition on file in this proceeding.

(d) and (e). Denies the allegations contained in paragraph V(d) and (e) of the petition.

(f) For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(f) of the petition.

(g) and (h). Denies the allegations contained in paragraph V (g) and (h) of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commission's determination of deficiency and penalty be approved.

/s/ DANIEL A. TAYLOR,

Chief Counsel,

Internal Revenue Service.

Of Counsel: Wilford H. Payne, Associate Appellate Counsel, John D. Picco, Special Attorney, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 15, 1954.

[Title of Tax Court and Docket No. 51526.]

## PETITION

The above named petitioners hereby petition the above entitled Court for a redetermination of the deficiency set forth by the respondent in his Notice of Deficiency (Symbols ARC-Ap: SF Port VEV: 90D) dated the 28th day of September, 1953, and as a basis for their proceeding allege as follows:

## I.

The petitioner are husband and wife and reside in Portland, Multnomah County, Oregon, and they filed their Federal Income Tax Returns for the years involved herein with the Collector of Internal Revenue for the District of Oregon, at Portland, Oregon.

## II.

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioners on September 28, 1953.

## III.

The within controversy involves an asserted deficiency in Federal Income Taxes for the years and in the amounts as follows:

Year	Deficiency
1948 .....	\$73,966.90
1949 .....	35,145.26

---

Total \$109,112.16

of which the entire amounts are in controversy.

#### IV.

The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

1. The respondent erred in including in petitioners' income the sum of \$15,440.00, or any sum whatsoever for the year 1948, and the sum of \$5,640.00, or any sum whatsoever, for the year 1949, as rental payments made during said years by Burnside Realty, Inc., and in holding that the petitioners derived any income whatsoever therefrom.

2. The respondent erred in determining that Eunice M. Royce was not a partner of Yellow Cab Company of Seattle for the year 1948 and 1949 and that the distributive share of said partnership income reported by Eunice M. Royce was the income of petitioners.

3. The respondent erred in increasing the petitioners' distributive partnership income in the amount of \$41,668.22 for the year 1948 and in the amount of \$29,729.80 for the year 1949, or any other amounts.

(a) The respondent erred in determining that the petitioners' distributive share of partnership income from the Yellow Cab Company of Portland for the year 1948 was \$15,470.67, and for the year 1949 was \$11,493.24, or any other amounts, greater than that reported by the petitioners for said years and, more specifically, the respondent erred in determining that the said partnership had claimed excessive depreciation in the amounts of \$10,806.28 for the year 1948 and \$3,400.42 for the year 1949, or any other amounts, that payments to Charles

W. Keffer and C. H. Luton in the amount of \$707.32 for the year 1948, or any other amount, are not deductible in computing said partnership income, that the sums of \$17,927.76 for the year 1948 and \$16,986.07 for the year 1949, or any other amounts, accrued as a city revenue tax on said partnership's books for said years were unallowable as deductions for said years and in determining that the sum of \$1,500.00 for the year 1948 and \$2,600.00 for the year 1949 were expended in said year in preparing used cabs for sale and that said sums were not deductible as an ordinary and necessary business expense of the said partnership.

4. The respondent erred in increasing the petitioners' net capital gains for the calendar year 1948 in the amount of \$899.01, and for the calendar year 1949 in the amount of \$1,194.84, or any other amounts.

(a) The respondent erred in determining that the petitioners' distributive share of long-term capital gains from the partnership of Yellow Cab Company of Seattle was in the amount of \$3,866.50, or any other amount in excess of \$1,468.37 for the calendar year 1948.

(b) The respondent erred in determining that the stock and note of Portland Meadows held by petitioner became worthless in the year 1948 rather than in the year 1949, and that the loss on the said note was allowable only as a long-term capital loss.

5. The respondent erred in determining that the petitioners received 560,000 shares of the common stock of Alder Gold-Copper Company in the year

1948 and 100,000 shares of said stock in the year 1949, and that the receipt of said stock in said years constituted additional taxable income in the amount of \$56,000.00, for the year 1948 and \$9,761.40, for the year 1949, or any other amounts.

6. The respondent erred in determining a disallowance of a bad debt loss in the amount of \$11,632.86 or any other amount claimed by petitioners for the calendar year 1949.

7. The respondent erred in determining additional income to petitioners in the amount of \$6,531.15, or any other amount, for the calendar year 1949, from the purchase by petitioners of the property located on West Burnside Street in Portland, Oregon.

## V.

The facts upon which petitioners rely as a basis for their appeal are as follows:

(a) Petitioners are husband and wife, residing in Portland, Oregon, and they reported their income for Federal Income Tax purposes on the basis of cash receipts and disbursements and calendar year.

(b) The respondent has determined for each of the years herein involved that rental payments made by Burnside Realty, Inc., pursuant to a lease agreement dated April 29, 1944, constituted taxable income to petitioner.

(c) On the 13th day of April, 1944, petitioner obtained an option to acquire a parcel of real estate on N.W. 21st and Burnside Streets in Portland, Oregon, from L. W. Hendrickson and Sue Hend-

rickson, husband and wife. The option price was a favorable one and in order for petitioner to be entitled to exercise the option at the end of a 5 year period, it was provided in effect that petitioner acquire a tenant for a five year term for the building which would be willing to pay and agree to pay for a five year period the sum of \$1,500.00 per month.

(d) Burnside Realty, Inc., was incorporated on the 18th day of April, 1944, with an authorized capital stock of 30 shares and a par value of \$50.00 per share, or a total capitalization of \$1,500.00. Petitioner subscribed to 10 shares thereof, Harold Murphy subscribed to 10 shares thereof and A. L. Schneider subscribed to 10 shares thereof and each agreed to pay for their stock the par value thereof.

(e) By a lease agreement dated the 29th day of April, 1944, Burnside Realty, Inc., agreed to lease from the said L. W. and Sue Hendrickson the building and equipment therein located at N.W. 21st and Burnside Streets for an agreed rental of \$1,500.00 per month and for a five year term.

(f) The said building leased by Burnside Realty, Inc., was a two story structure with the lower story occupied by commercial rental units and the upper floor was one large ballroom. Burnside Realty, Inc., was organized to engage in the business of operating the rental properties and of operating a ballroom. There was restaurant and ballroom equipment included in the building and included in the lease of a total reasonable value of approximately \$15,000.00. The reasonable rental value of the

building for any one or any entity who or which wished to operate a rental property and a ballroom of this character was in excess of \$1,500.00 per month.

(g) On or about January 14, 1946, the said three stockholders of Burnside Realty, Inc., each surrendered 2½ shares of his stock and the surrendered stock was then issued to Mr. Edward J. Cheney, an experienced ballroom operator.

(h) During all of the years herein involved, Burnside Realty, Inc., operated the rental properties and operated the ballroom therein and made the rental payments called for under the lease agreement with the said Hendricksons.

(i) At or about the time petitioner obtained the option to purchase the said real property from the Hendricksons, the Hendricksons executed a Deed and Bill of Sale to said property and the personal property located therein, to the petitioner and said documents were placed in escrow with the Bank of California. Petitioner exercised his option in 1949 to purchase the property in accordance with the terms thereof.

(j) The respondent has determined that the petitioners' daughter, Eunice M. Royce, was not, for the years 1945 to 1949, inclusive, a bona fide partner in the partnership known as the Yellow Cab Company of Seattle and that the income reported by the said Eunice M. Royce for the said years was includable in the income of petitioners.

(k) In April, 1944, petitioner was a stockholder in the Yellow Cab Company of Seattle (Washing-

ton), a Washington corporation. Prior to April 30, 1944, petitioner made a gift of 402½ shares of his said stock to Dora F. Royce and of 700 shares of his said stock to himself as trustee under a formal declaration of trust for Eunice Mae Royce, his minor daughter.

(l) Said Yellow Cab Company was liquidated on the 30th day of April, 1944, and all of its assets of every kind and character were conveyed to the then stockholders of record including the said Dora F. Royce and Eunice Mae Royce. On the 1st day of May, 1944, all of the persons who had been stockholders of said Yellow Cab Company, including the said Dora F. Royce and Eunice Mae Royce, conveyed the said property to the Yellow Cab Company of Seattle, a partnership. The said Dora F. Royce and Eunice Mae Royce really intended to be, and all members of the partnership intended them to be partners in said partnership and all the members thereof entered into a formal partnership agreement and publicly proclaimed themselves to be partners. They were and are partners for Federal Tax as well as other purposes.

(m) On or about the 28th day of November, 1942, petitioner and B. Royce purchased the partnership interests of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland for a cash consideration. At the same time, the partnership entered into a profit sharing agreement with the said Charles Keffer and C. H. Luton whereby each would be entitled to a certain percentage of the partnership profits thereafter as long as it was mu-

tually agreeable that the said individuals continued in the employment of the partnership. Percentage of profit payments made under these agreements were properly deducted by the partnership in computing its net income for the year 1948 herein involved.

(n) For the year 1948 the Commissioner determined that the Yellow Cab Company of Portland had claimed excessive depreciation in the amount of \$10,806.28 and in the amount of \$3,400.42 for the year 1949.

(o) The Yellow Cab Company of Portland has, for a number of years, followed the consistent practice of using a straight line method of depreciation and completely writing off all of its taxi-cabs over a four year period. The depreciation claimed by the Yellow Cab Company of Portland constituted a reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence), under normal circumstances.

(p) During the calendar years 1948 and 1949, the City of Portland assessed a city 2% gross revenue tax on the partnership known as the Yellow Cab Company of Portland in the amounts of \$17,927.67 and \$16,986.07 respectively. These said sums were accrued on the books of the Yellow Cab Company of Portland in the years indicated and were claimed by said partnership as deductions on its returns for the said years, in accordance with the method of accounting regularly employed in keeping its books of account.

(q) The respondent has disallowed \$1,500.00 for

the year 1948 and \$2,600.00 for the year 1949 of the repair expenses claimed by the Yellow Cab Company of Portland, a partnership, as deductions for said years, respectively, said disallowance being based upon the theory that the said company made capital expenditures of \$100.00 per cab sold in those years in preparing and painting each cab for sale.

(r) The Yellow Cab Company of Portland, a partnership, maintains its own garage and staff of mechanics and makes any and all repairs necessary to its cabs therein. The repair and painting expenses incurred by the said company for the years 1948 and 1949 represent repairs required in the ordinary course of business, and were charged to the account of repairs and maintenance in accordance with the method of accounting regularly employed and established many years before.

(s) Any common stock of Alder Gold-Copper Company received by petitioner in the calendar years 1948 and 1949 represented stock issued to him for monies paid in or advanced by him on behalf or in connection with the said corporation. Also, the said common stock of the said corporation did not have any fair or market value during said years 1948 and 1949. Petitioner did not receive any said stock as compensation for services.

(t) During the calendar year 1949, petitioner, E. Royce, exercised his option to purchase certain property located on West Burnside in Portland, Oregon. There was due to B. Royce, petitioner's brother, the sum of \$6,531.15 in connection with the purchase of said property. Petitioner, E. Royce,

was not relieved of his obligation to B. Royce for said amount and in fact, E. Royce paid off this obligation in full in 1951, plus interest, to his said brother. There was no cancellation of the obligation at any time prior to its payment in full.

(u) In 1946, petitioner, E. Royce, had purchased \$100.00 worth of stock in Portland Meadows, Inc., and advanced \$900.00 to said company on a note. Said note was not in registered form and was not a security as that term is defined in the Internal Revenue Code. The stock and note became worthless in 1949, and petitioners properly claimed a long-term loss on the said stock and were entitled to deduct the full amount of loss on the note as a non-business bad debt.

(v) The basis for the respondent's determination that petitioners had additional capital gain from the partnership Yellow Cab Company of Seattle is not set forth and petitioners are, therefore, at a loss with regard to determining what facts need to be set forth. Petitioners allege that the net short-term gain and long-term capital gain reported by them as their distributive share of said gains from said partnership for the years 1948 and 1949 were properly and accurately reported.

(w) On or about November 19, 1946, petitioner, E. Royce, in the regular course of his business, loaned the sum of \$20,000.00 to East Side Buses, a partnership.

(x) In 1949, petitioner, E. Royce, received property of the value of \$8,367.14 in full settlement of the note and the balance due on the note was deter-

mined to be uncollectible and said part of said debt worthless in said year and was properly claimed by petitioners as a loss in the amount of \$11,632.86 in said year.

Wherefore, petitioners pray that the Court hear this proceeding and determine that there is no deficiency in income taxes for the years 1948 and 1949, or either of them, and give such other or further relief as in the premises the Court may deem fit and proper.

/s/ R. T. JACOB

Of Counsel:

Jacob, Jones & Brown.

Duly Verified.

EXHIBIT "A"

Regional

1112 Cascade Building  
Portland 4, Oregon

ARC-Ap:SF

Port:VEV:90D

Mr. E. Royce

Mrs. Dora F. Royce

628 N. W. Sixth Avenue

Portland, Oregon

Dear Mr. and Mrs. Royce:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1948 and 1949, discloses deficiencies in the total amount of \$109,112.16, as shown in the statement attached.

In accordance with the provisions of existing in-

ternal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiencies. In counting the 90 days, you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,  
Commissioner,

/s/ By A. N. Williams,  
Associate Chief, Appellate Division.

Enclosures:

Statement	Form 870
Form 1276	VEVelene 1a

## STATEMENT

E. Royce and Dora F. Royce  
Husband and Wife  
628 N.W. Sixth Avenue  
Portland, Oregon

Income tax liability for the taxable years ended December 31, 1948, and 1949.

Year	Deficiency
1948 .....	\$ 73,966.90
1949 .....	35,145.26
Total .....	\$109,112.16

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated February 9, 1951, and to your protest dated September 5, 1951.

A copy of this letter and statement has been mailed to your representative, Mr. Robert T. Jacob, 917 Public Service Building, Portland 4, Oregon, in accordance with the authority contained in the power of attorney executed by you.

The records of this office show that on or prior to April 13, 1944, Lloyd W. Hendrickson and Sue Hendrickson, husband and wife, were the owners of certain real and personal properties located at Northwest 21st and Burnside Streets, Portland, Oregon, the real property being otherwise described as a portion of Block 31, Kings Second Addition to the City of Portland. On that date, April 13, 1944, Mr. and Mrs. Hendrickson executed a document

designated as an "Option to Buy" whereby they gave you an option to purchase said real and personal properties on or prior to April 19, 1949, in accordance with the terms and conditions therein stated. The option agreement recited that it was "understood that said property" was then "under lease for a term" which would expire on April 19, 1949, and that the option therein provided for could be exercised only "after all rentals reserved in said lease" were fully paid at the time provided in the lease or in advance thereof. The option agreement further stated that it was expected that part of the obligations then outstanding against the property would remain unpaid at the expiration of the term of the lease. By the terms of the agreement, if you exercised your election to purchase, you would be required to pay the sum of \$35,000.00 less any outstanding indebtedness assumed by you, plus interest thereon.

On or about April 18, 1944, you, A. L. Schneider and Harold Murphy organized Burnside Realty, Inc., under the laws of Oregon with an authorized capital stock of 30 common shares, par value \$50.00 per share, which was issued to you, Mr. Schneider and Mr. Murphy in equal one-third proportions. This corporation was purportedly organized for the purpose of continuing the operation of rental and amusement businesses theretofore conducted in and on the premises owned by Lloyd W. Hendrickson and his wife, Sue Hendrickson, at Northwest 21st and Burnside Streets, Portland, Oregon.

By the terms of an agreement entered into by and between Burnside Realty, Inc., and Lloyd W.

Hendrickson and Sue Hendrickson, husband and wife, on or about April 29, 1944, Burnside Realty, Inc., as lessee, agreed to lease the properties at Northwest 21st and Burnside Streets, Portland, Oregon, from Mr. and Mr. Hendrickson, as lessors, for a term of five years from April 19, 1944, at a monthly rental of \$1,500.00.

On or about April 26, 1944, Lloyd W. Hendrickson and Sue Hendrickson placed in escrow with the Bank of California, N. A., Portland, Oregon, the option agreement dated April 13, 1944, together with a warranty deed also dated April 13, 1944, and a bill of sale dated April 24, 1944, executed by them, whereby they conveyed title to the properties at Northwest 21st and Burnside Streets to you.

Prior to December 6, 1945, Lloyd W. Hendrickson and Sue Hendrickson were divorced. By virtue of an agreement entered into on or about that date your brother, B. Royce, acquired by assignment the rights, title and interest to the sum which would be due to Lloyd W. Hendrickson under the option agreement of April 13, 1944, in the event that you elected to exercise your right to purchase the property under that option.

On or about April 15, 1949, you advised the escrow agent, the Bank of California, N. A., Portland, Oregon, that you would exercise the option to purchase the property at Northwest 21st and Burnside Streets, Portland, in accordance with the terms of the option agreement dated April 13, 1944. Prior thereto Burnside Realty, Inc., had made sixty monthly payments of \$1,500.00 each, or \$90,000.00, to Lloyd W. and Sue Hendrickson or their assign-

ees. At the date of exercising the option, April 15, 1949, (1) the mortgage indebtedness on the property had been reduced to \$21,937.70, (2) by the terms of the option agreement dated April 13, 1944, the sum of \$6,531.15 was due to Sue Miller (formerly Sue Hendrickson) and (3) by the terms of the option agreement and by reason of the fact that your brother, B. Royce, had acquired by assignment the rights of Lloyd W. Hendrickson under that agreement, the sum of \$6,531.15 was due to B. Royce.

This office holds that you acquired the property at Northwest 21st and Burnside Streets, Portland, Oregon, by purchase in April, 1944, for a total consideration of \$125,000.00, computed as follows:

Sixty monthly payments of rent made by Burnside

Realty, Inc., of \$1,500.00 each.....	\$ 90,000.00
Balance due on mortgage April 15, 1949.....	21,937.70
Payment to Sue Miller	
(formerly Sue Hendrickson).....	6,531.15
Liability to B. Royce.....	6,531.15
 Total .....	 <u>\$125,000.00</u>

This office further holds that the rental payments made by Burnside Realty, Inc., pursuant to the lease agreement dated April 29, 1944, on such property reduced by allowable depreciation, constituted taxable income to you. Taxable income reported by you for the years 1948 and 1949 has therefore been increased by rental payments in the amounts shown below:

Year	Rent	Depreciation	Increase in Income
1948 .....	\$18,000.00	\$2,560.00	\$15,440.00
1949 .....	8,200.00	2,560.00	5,640.00
Total .....	<u>\$26,200.00</u>	<u>\$5,120.00</u>	<u>\$21,080.00</u>

The records of this office show that income tax returns were filed in the name of your daughter, Eunice M. Royce, for the calendar years 1944 and 1946 to 1949 inclusive, which were executed by you as trustee. With respect to the year 1945, an unsigned return was filed.

In each of the returns filed by or for Eunice M. Royce for the years 1945 to 1949, inclusive, there was reported as her income the sum which the Yellow Cab Company of Seattle, Washington, reported in partnership returns of income filed by it for the fiscal years ended April 30, 1945 to 1949, inclusive, as income distributable to her.

This office holds that Eunice M. Royce was not a partner of Yellow Cab Company of Seattle for any of the years under review and that the sums reported by her as her distributive shares of partnership incomes are taxable to you.

Taxable Year Ended December 31, 1948  
Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$ 72,136.09
Unallowable deductions and additional income:	
(a) Rental income .....	\$15,440.00
(b) Partnership income .....	41,668.22
(c) Capital gains .....	899.01
(d) Other income .....	56,000.00 114,007.23
Total.....	\$186,143.32
Nontaxable income and additional deductions:	
(e) Contributions .....	97.84
Net income adjusted.....	\$186,045.48

### Explanation of Adjustments

(a) On the basis of the facts and for the reasons stated above, it has been determined that as a result of the rental payments made during the year by Burnside Realty, Inc., you realized rental income not reported in your return in the amount of \$15,440.00.

(b) In your return filed for the calendar year 1948, you reported the sum of \$47,910.85 as being your distributive share of ordinary partnership incomes. It has been determined that your distributive share of net income from the partnerships is in the amount of \$89,579.07 and your reported net income has therefore been increased by the amount of \$41,668.22 computed as follows:

Name of Partnership	Income Reported	Income Adjusted
Yellow Cab Company, Portland.....	\$15,228.73	\$30,699.40
Yellow Cab Company, Seattle.....	19,123.35	45,320.90
Gray Line Motor Tours.....	10,600.78	10,600.78
Queen City Garage.....	2,940.19	2,940.19
Royce Brothers .....	14,830.12	14,830.12
East Side Buses.....	(14,812.32)	(14,812.32)
 <b>Totals.....</b>	 <b>\$47,910.85</b>	 <b>\$89,579.07</b>
 Partnership income reported.....	 47,910.85	
 Increase .....	 \$41,668.22	

With respect to the Yellow Cab Company of Portland, your distributive share of ordinary partnership income has been increased from \$15,228.73 to \$30,699.40 by reason of the following adjustments:

Ordinary net income as reported in partnership return \$30,457.45  
 Unallowable deductions and additional income:

(1) Depreciation .....	\$10,806.28
(2) Cost of partnership interest.....	707.32
(3) Accrued taxes .....	17,927.76
(4) Repairs .....	1,500.00

---

Ordinary net income adjusted..... \$61,398.81

Your distributive share of the above adjusted income \$30,699.40  
 Reported ..... 15,228.73

Increase ..... \$15,470.67

---

(1) The depreciation allowable on taxicabs has been determined to be in the amount of \$27,784.89 rather than \$38,591.17 as claimed in the partnership return filed for the year 1949 and the ordinary net income has therefore been increased by the amount of \$10,806.28.

(2) The record shows that prior to August 1, 1942, Charles W. Keffer and C. H. Luton, were the owners of .659% and .906% interests, respectively, in the partnership Yellow Cab Company of Portland. On or about that date, August 1, 1942, you and your brother, B. Royce purchased the interests of these individuals under an agreement whereby, *inter alia*, each of the vendors was to receive 1% of the partnership net profits for a period of five years.

During the year under review, payments to them were charged to partnership operation as compensation. This office holds that payments in 1948, totaling \$707.32, made by the partnership, under the contract and in the manner referred to in the pre-

ceding paragraph were capital in nature and non deductible in computing partnership income.

(3) It has been determined that the City occupation tax in the amount of \$17,927.76 claimed as a deduction in the return filed for the calendar year 1948 was a contested liability and that the deduction is therefore not allowable in 1948.

(4) It has been determined that of the deduction claimed for repairs in the partnership return filed for the calendar year 1948, the amount of \$1,500.00 was incurred in preparing used cabs for sale. Such expenditures are therefore capital in nature and not deductible as an ordinary and necessary business expense.

(c) It has been determined that your taxable net capital gains for the calendar year 1948 are in the total amount of \$15,167.97 rather than \$14,268.96 as reported in your return. Your net income has therefore been increased by the amount of \$899.01, computed as follows:

(1) Yellow Cab Company of Seattle.....	\$2,052.15
(2) Yellow Cab Company of Portland.....	(653.14)
(3) Portland Meadows Stock.....	(500.00)
	<hr/>
Increase .....	\$ 899.01
	<hr/>

(1) In your return filed for the calendar year 1948, you reported the amounts of \$345.98 and \$1,468.37 as your distributive share of the short-term capital gains and recognized long-term capital gains respectively of the partnership Yellow Cab Company of Seattle. It has been determined that your distributive share of recognized long-term cap-

ital gains from such partnership is in the amount of \$3,866.50 and that there were no short-term capital gains. Your reported net income has therefore been increased by the amount of \$2,052.15.

(2) In your return filed for the calendar year 1948, you reported the amount of \$1,125.15 as your distributive share of the recognized capital gains of the partnership Yellow Cab Company of Portland. It has been determined that the recognized capital gains of the partnership are in the amount of \$944.02 and that your distributive share is in the amount of \$472.01. Your net income has therefore been decreased by the amount of \$653.14.

(3) In your return filed for the calendar year 1949, you claimed as a loss, stock of Portland Meadows having a cost to you of \$100.00 and a note of Portland Meadows having a cost to you of \$900.00. On the basis that such stock and note became worthless in the year 1949, you reported a loss of \$100.00 on the stock as a long-term capital loss, of which 50% was taken into account and a loss of \$900.00 on the note as a short-term capital loss, of which 100% was taken into account. It has been determined that the above stock and note of Portland Meadows were acquired by you in 1946 under a plan of capitalization and that they both became worthless in 1948 rather than 1949. It is therefore held that the cost of such stock and note is allowable as a long-term capital loss for the calendar year 1948 and your reported capital gains are accordingly decreased by the amount of \$500.00 under the provisions of section 117(b) of the Internal Revenue Code.

(d) The records of this office show that during the calendar year 1948, you received 560,000 shares of the common stock of the Alder-Gold Copper Company having a fair market value of ten cents per share as compensation for services rendered. In your return for the calendar year 1948 you reported no income from this source. It is held that the receipt of such stock constitutes taxable income to you to the extent of its fair market value and your reported net income has therefore been increased by the amount of \$56,000.00.

(e) Since it has been determined that the income of the partnership Yellow Cab Company of Seattle reported by your daughter, Eunice M. Royce, is taxable to you, the distributive share of contributions allocated to her have been allowed to you as an additional deduction.

Computation of Income Tax

Net income as adjusted.....	\$186,045.48
Less: Excess of net long-term capital gain over net short-term capital loss.....	15,167.97
Ordinary net income.....	\$170,877.51
Less: Exemptions (4) x \$600.00.....	2,400.00
Income subject to tentative tax.....	\$168,477.51
One-half of such income if joint return.....	84,238.76
Tentative tax .....	53,780.56
Tax reduction:	
\$ 400.00 @ 17%.....	\$ 68.00
53,380.56 @ 12%.....	6,405.67
	6,473.67
Combined normal tax and surtax.....	\$ 47,306.89

## Computation of Income Tax—(Continued)

Partial tax liability (\$47,306.89 x 2).....	\$ 94,613.78
Plus: 50% of \$15,167.97.....	7,583.99
Income tax liability.....	\$102,197.77
Income tax liability disclosed by return,	
Account No. 9119001.....	28,230.87
Deficiency in income tax.....	\$ 73,966.90

## Taxable Year Ended December 31, 1949

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$ 50,619.18
Unallowable deductions and additional income:	
(a) Rental income .....	\$ 5,640.00
(b) Partnership income .....	29,729.80
(c) Capital gains .....	1,194.84
(d) Business income .....	11,632.86
(e) Cancellation of indebtedness.....	6,531.15
(f) Other income .....	9,761.40
Total .....	115,109.23
Nontaxable income and additional deductions:	
(g) Contributions .....	97.92
Net income adjusted.....	\$115,011.31

(a) On the basis of the facts and for the reasons stated above, it has been determined that as a result of the rental payments made during the year by Burnside Realty, Inc., you realized rental income not reported in your return in the amount of \$5,640.00.

(b) In your return filed for the calendar year 1949, you reported the sum of \$37,745.45 as being your distributive share of ordinary partnership income. It has been determined that your distributive share of net income from partnerships is in the amount of \$66,040.24 and your reported net income

has therefore been increased by the amount of \$29,729.80 computed as follows:

Name of Partnership	Income Reported	Income Adjusted
East Side Buses, Portland, Oregon.....	\$ 9,369.16	\$ 9,369.16
Yellow Cab Company of Portland.....	(14,155.86)	( 2,662.62)
Royce Brothers, Portland, Oregon.....	12,888.29	12,888.29
Yellow Cab Company of Seattle.....	12,412.01	30,648.57
Queen City Garage, Seattle, Washington	3,028.36	3,028.36
Gray Line Tours, Seattle, Washington	14,203.49	14,203.49
 Totals.....	 \$37,745.45	 \$67,475.25
 Partnership income reported.....	  37,745.45	
Increase .....		\$29,729.80

With respect to the Yellow Cab Company of Portland, your distributive share of ordinary partnership loss has been decreased from \$14,155.86 to \$2,662.62 by reason of the following adjustments:

Ordinary loss as disclosed by partnership return		(\$28,311.73)
Unallowable deductions and additional income:		
(1) Depreciation .....	\$ 3,400.42	
(2) Accrued taxes .....	16,986.07	
(3) Repairs .....	2,600.00	22,986.49
 Ordinary loss as adjusted .....	  (\$ 5,325.24)	
Your distributive share of the above adjusted loss		(\$ 2,662.62)
Reported .....		( 14,155.86)
 Increase .....	  \$11,493.24	

(1) It has been determined that the depreciation allowable on taxicabs is in the amount of \$36,990.52, rather than \$40,390.94 as claimed, and the ordinary net loss of the partnership has been decreased accordingly by the amount of \$3,400.42.

(2) It has been determined that the accrued

City occupational tax in the amount of \$16,986.07 claimed as a deduction in the partnership return filed for the calendar year 1949 was being contested by the partnership and that the deduction is therefore unallowable.

(3) It has been determined that of the deduction claimed for repairs in the partnership return filed for the calendar year 1949, the amount of \$2,600.00 was incurred in preparing such cabs for sale. Such expenditures are therefore capital in nature and not deductible as an ordinary and necessary business expense.

(c) In your return filed for the calendar year 1949, you reported net capital gains in the amount of \$17,413.12. It has been determined that the correct sum of your net capital gains is in the amount of \$18,607.96 and your net income has accordingly been increased by the amount of \$1,194.84 computed as follows:

	Capital Gains	
	Reported	Corrected
Oregon Motor Stages stock.....	\$22,236.03	\$22,235.23
Yellow Cab Company, Portland.....	5,932.94	3,991.47
Yellow Cab Company, Seattle.....	8,521.28	8,736.54
Royce Bros. .....	435.99	435.99
Gray Line Motor Tours.....	None	1,816.68
 Total .....	 \$37,126.24	 \$37,215.91
 50% .....	 \$18,563.12	 \$18,607.96
Less: Portland Meadows Notes — 100% ( 1,150.00)		None
 Net capital gains .....	 \$17,413.12	 \$18,607.96
 Reported .....	 =====	 17,413.12
 Adjustment .....	 =====	 \$ 1,194.84

(d) In your return filed for the calendar year 1949, you claimed a bad debt loss in the amount of \$11,632.86. It has been determined that you had no bad debt loss during the year 1949 and your net income has accordingly been increased by the amount of \$11,632.86.

(e) The records of this office show that during the year 1949 you were granted a release from an escrow agreement pertaining to the purchase of property located on West Burnside Street in Portland, Oregon, without paying an amount of \$6,531.15 due on such property. It is held that the release from such payment constitutes taxable income to you in the year 1949 in the amount of \$6,531.15.

(f) The records of this office show that during the year 1949 you received 100,000 shares of the common stock of the Alder Gold-Copper Company having a fair market value equal to book value of \$0.0976140 per share as compensation for services rendered. In your return for the calendar year 1949 you reported no income from this source. It is held that the receipt of such stock constitutes taxable income to you to the extent of its fair market value, and your reported net income for the calendar year 1949 has therefore been increased by the amount of \$9,761.40.

(g) It has been determined that the income of the partnership Yellow Cab Company of Seattle, reported by your daughter, Eunice M. Royce, is taxable to you. The distributive share of contributions paid by the partnership and allocated to her

are therefore allowable to you as an additional deduction.

Computation of Income Tax

Net income as adjusted.....	\$115,011.31
Less: Excess of net long term capital gain over net short term capital loss.....	18,607.96
<hr/>	<hr/>
Ordinary net income.....	\$ 96,403.35
Less: Exemptions (\$600.00 x 4).....	2,400.00
<hr/>	<hr/>
Income subject to tentative tax.....	\$ 94,003.35
One-half of such income if joint return.....	47,001.68
Tentative tax .....	24,661.21
Tax reduction: \$ 400.00 @ 17%..... \$ 68.00	
24,261.21 @ 12%..... 2,911.35	2,979.35
<hr/>	<hr/>
Combined normal tax and surtax.....	\$ 21,681.86
Partial tax liability (\$21,681.86 x 2).....	43,363.72
Plus: 50% of \$18,607.96.....	9,303.98
<hr/>	<hr/>
Income tax liability.....	\$ 52,667.70
Income tax liability disclosed by return.....	17,522.44
<hr/>	<hr/>
Deficiency in income tax.....	\$ 35,145.26
<hr/>	<hr/>

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

---

[Title of Tax Court and Docket No. 51526.]

ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits and denies as follows:

1. Admits the allegations contained in paragraph I of the petition.

2. Admits the allegations contained in paragraph II of the petition.

3. Admits the allegation contained in paragraph III of the petition.

4. Denies that he erred in his determination of the deficiencies in income tax as shown by the notice of deficiency from which the appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.

5. (a) and (b) Admits the allegations contained in paragraph V(a) and (b) of the petition.

(c) Admits the allegations contained in the first sentence of paragraph V(c) of the petition. Denies the remaining allegations contained in paragraph V(c) of the petition.

(d) and (e) Admits the allegations contained in paragraph V(d) and (e) of the petition.

(f) and (g) For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(f) and (g) of the petition.

(h), (i) and (j) Admits the allegations contained in paragraph V(h), (i) and (j) of the petition.

(k) Admits the allegations contained in the first sentence of paragraph V(k) of the petition. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining allegations contained in paragraph V(k) of the petition.

(l) Denies the allegations contained in paragraph V(l) of the petition.

(m) Admits that on or about November 28, 1942, the petitioner E. Royce and B. Royce purchased the partnership interest of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland. Denies the remaining allegations contained in paragraph V(m) of the petition.

(n) Admits the allegations contained in paragraph V(n) of the petition.

(o) Denies the allegations contained in paragraph V(o) of the petition.

(p) Admits the allegations contained in the first sentence of paragraph V(p) of the petition. Admits that the respective amounts of \$17,927.67 and \$16,986.07 were claimed by the Yellow Cab Company of Portland as deductions on its returns for the years 1948 and 1949. Denies the remaining allegations contained in paragraph V(p) of the petition.

(q) Admits that the respondent has disallowed \$1,500.00 for the year 1948 and \$2,600.00 for the year 1949 for expenses incurred by the Yellow Cab Company of Portland, a partnership, in preparing cabs for sale, which amounts were claimed by the partnership as deductions for said years. Denies the remaining allegations contained in paragraph V(q) of the petition.

(r) and (s) Denies the allegations contained in paragraph V (r) and (s) of the petition.

(t) Admits the allegations contained in the first two sentences of paragraph V(t) of the petition. Denies the remaining allegations contained in paragraph V(t) of the petition.

(u) Admits the allegations contained in the first

sentence of paragraph V(u) of the petition. Denies the remaining allegations contained in paragraph V(u) of the petition.

(v), (w) and (x) Denies the allegations contained in paragraph V(v), (w) and (x) of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioners' appeal be denied and that the Commissioner's determination of the deficiencies be approved.

/s/ DANIEL A. TAYLOR, WHP,  
Chief Counsel, Internal Revenue  
Service.

Of Counsel: Wilford H. Payne, Associate Appellate  
Counsel, John D. Picco, Special Attorney, In-  
ternal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 23, 1954.

---

[Title of Tax Court and Docket No. 51527.]

### PETITION

The above named petitioner hereby petitions the above entitled Court for a redetermination of the deficiency set forth by the respondent in his Notice of Deficiency (symbols ARC-AP:SF Port: VEV: 90D) dated the 28th day of September, 1953, and as a basis for this proceedings alleges as follows:

**I.**

The petitioner was married and residing with his wife, Dora F. Royce, in Portland, Multnomah County, Oregon, and filed his Federal Income Tax Return for the years involved with the Collector of Internal Revenue for the District of Oregon, at Portland, Oregon.

**II.**

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on September 28, 1953.

**III.**

The within controversy involves an asserted deficiency in Federal Income Taxes for the years and in the amounts as follows:

Year	Deficiency	Penalty Sec. 293(b)	Penalty under Sec. 294(d)(2)
1944.....	\$ 74,286.82		
1945.....	495,661.69		\$31,467.14
1946.....	143,714.83		
1947.....	112,261.13	\$56,130.57	7,011.97
	—————	—————	—————
	\$825,924.47	\$56,130.57	\$38,479.11

**IV.**

In arriving at his conclusions as set forth in said Notice of Deficiency, the respondent committed the following errors:

As to the calendar year 1944:

1. The respondent erred in including in petitioner's income the sum of \$10,893.32, or any sum whatsoever, as rental payments made during 1944 by Burnside Realty, Inc., and in holding that petitioner derived any income whatsoever therefrom.

2. The respondent erred in increasing petitioner's capital gains in the amount of \$32,674.55, or any sum whatsoever.

3. The respondent erred in increasing petitioner's partnership income in the sum of \$52,366.85, or any sum whatsoever.

4. The respondent erred in reducing petitioner's capital loss carry-over by the amount of \$4,834.05, or any other amount.

As to the calendar year 1945:

1. The respondent erred in including in petitioner's income the sum of \$20,000.00, or any other amount, as being a distribution of the earnings and profits of Hippodrome Amusement Co. to petitioner.

2. The respondent erred in determining that petitioner realized taxable income in the amount of \$350,000.00, or any other amount, from the Oregon Motor Stages stock transaction.

3. The respondent erred in determining additional income to petitioner in the amount of \$8,054.80 and \$90.63, or any other amounts as additional income from the Oregon Motor Stages stock transaction.

4. The respondent erred in including in petitioner's income the sum of \$15,440.00, or any sum whatsoever, as rental payments made during 1945 by Burnside Realty, Inc., and in holding that petitioner derived any income whatsoever therefrom.

5. The respondent erred in determining that Dora F. Royce was not a valid partner in this and other years involved herein in the Yellow Cab Company of Portland and, therefore, that the sum

of \$130.29 reported by her as her share of capital gains from said company is includable in the income of petitioner.

6. The respondent erred in increasing petitioner's distributive share of the incomes of certain partnerships in the amount of \$142,006.34, or any other amount.

(a) The respondent erred in determining that petitioner's distributive share of partnership income from the Yellow Cab Company of Portland was \$68,026.05 greater than that reported by petitioner and more specifically, the Commissioner erred in determining that the distributive share of said partnership income reported by Dora F. Royce was the income of petitioner, that said partnership had claimed excessive depreciation in the amount of \$10,213.38, or any other amount, and that payments to Charles W. Keffer and C. H. Luton in the amount of \$5,349.32, or any other amount, in this or any other year, are not deductible in computing said partnership income.

(b) The respondent erred in determining petitioner's distributive share of partnership income from the Yellow Cab Company of Seattle should be increased in the amount of \$74,676.97, or any other amount, and more specifically that the distributive share of said partnership income reported by Dora F. Royce and Eunice Mae Roye was the income of petitioner in this or any other year herein involved.

7. The respondent erred in disallowing the amount of \$367.50, or any part of the \$500.00 de-

duction for contributions claimed by petitioner.

8. The respondent erred in asserting a penalty in any amount under Section 294(d)(2) Internal Revenue Code, or any other section.

As to the calendar year 1946:

1. The respondent erred in including in petitioner's income the sum of \$15,440.00, or any sum whatsoever, as rental payments made during 1946 by Burnside Realty, Inc., and in holding that petitioner derived any income therefrom.

2. The respondent erred in increasing petitioner's distributive share of income reported from certain partnerships in the amount of \$152,961.16, or any other amount.

(a) With respect to the partnership known as Yellow Cab Company of Portland, the respondent erred in determining that the partnership had claimed excessive depreciation in the amount of \$3,034.93, or any other amount, and in determining that the sum of \$4,986.38 paid to Charles W. Keffler and C. H. Luton was not deductible in computing partnership income.

As to the calendar year 1947:

1. The respondent erred in including in income of the marital community of petitioner and his wife the sum of \$15,440.00, or any sum whatsoever, as rental payments made during 1947 by Burnside Realty, Inc., and in holding that the marital community and/or petitioner derived any income therefrom.

2. The respondent erred in determining an increase in the distributive share of the marital com-

munity of petitioner and his wife of the income of certain partnerships in the amount of \$112,550.54, or any other amount.

(a) With respect to the partnership known as Yellow Cab Company of Portland, the respondent erred in determining the sum of \$9,750.67, or any other amount, to be excessive depreciation, in determining that the sum of \$2,908.60 paid to Charles W. Keffer and C. H. Luton was not deductible in computing partnership income, in determining that the sum of \$9,899.71, or any other amount, accrued as a City Revenue Tax was unallowable and in determining that the sum of \$7,500.00 was expended in preparing used cabs for sale was not deductible as an ordinary and necessary business expense.

3. The respondent erred in determining an increase in the amount of \$9,323.76, or any other amount, in petitioner's net capital gain from Yellow Cab Company, Seattle, and Yellow Cab Company, Portland.

4. The respondent erred in determining additional income in the amount of \$22,000.00, or any other amount, to petitioner from his receipt of 440,000 shares of common stock of Alder Gold-Copper Company.

5. The respondent erred in asserting a penalty in any amount under Section 294(d)(2) Internal Revenue Code, or any other section.

6. The respondent further erred in determining a 50% penalty or in any amount against petitioner under Section 293(b) of the Internal Revenue Code, or any other section.

## V.

The facts upon which petitioner relies as a basis for this appeal are as follows:

(a) Petitioner is an individual residing in Portland, Oregon, and was, during all the years involved herein, and still is married to Dora F. Royce, and reported his income for Federal Income Tax purposes on the basis of cash receipts and disbursements and calendar year.

(b) The respondent has determined for each of the years herein involved that rental payments made by Burnside Realty, Inc., pursuant to a lease agreement dated April 29, 1944, constituted taxable income to petitioner.

(c) On the 13th day of April, 1944, petitioner obtained an option to acquire a parcel of real estate on N.W. 21st and Burnside Streets in Portland, Oregon, from L. W. Hendrickson and Sue Hendrickson, husband and wife. The option price was a favorable one and in order for petitioner to be entitled to exercise the option at the end of a 5 year period, it was provided in effect that petitioner acquire a tenant for a five year term for the building which would be willing to pay and agree to pay for a 5 year period the sum of \$1,500.00 per month.

(d) Burnside Realty, Inc., was incorporated on the 18th day of April, 1944, with an authorized capital stock of 30 shares and a par value of \$50.00 per share, or a total capitalization of \$1,500.00. Petitioner subscribed to 10 shares thereof, Harold Murphy subscribed to 10 shares thereof and A. L.

Schneider subscribed to 10 shares thereof and each agreed to pay for their stock the par value thereof.

(e) By a lease agreement dated the 29th day of April, 1944, Burnside Realty, Inc., agreed to lease from the said L. W. and Sue Hendrickson the building and equipment therein located at N.W. 21st and Burnside Streets for an agreed rental of \$1,500.00 per month and for a five year term.

(f) The said building leased by Burnside Realty, Inc., was a two story structure with the lower story occupied by commercial rental units and the upper floor was one large ballroom. Burnside Realty, Inc., was organized to engage in the business of operating the rental properties and of operating a ballroom. There was restaurant and ballroom equipment included in the building and included in the lease of a total reasonable value of approximately \$15,000.00. The reasonable rental value of the building for any one or any entity who or which wished to operate a rental property and a ballroom of this character was in excess of \$1,500.00 per month.

(g) On or about January 14, 1946, the said three stockholders of Burnside Realty, Inc., each surrendered 2½ shares of his stock and the surrendered stock was then issued to Mr. Edward J. Cheney, an experienced ballroom operator.

(h) During all of the years herein involved, Burnside Realty, Inc., operated the rental properties and operated the ballroom therein and made the rental payments called for under the lease agreement with the said Hendricksons.

(i) At or about the time petitioner obtained the option to purchase the said real property from the Hendricksons, the Hendricksons executed a Deed and Bill of Sale to said property and the personal property located therein, to the petitioner and said documents were placed in escrow with the Bank of California. Petitioner exercised his option in 1949 to purchase the property in accordance with the terms thereof.

(j) The respondent has determined that petitioner's wife, Dora F. Royce, was not, for the years 1944 to 1947, inclusive, a bona fide partner in the partnership known as the Yellow Cab Company of Portland and that she was not for the years 1945 to 1947, inclusive, a bona fide partner in the partnership known as the Yellow Cab Company of Seattle and that the petitioner's daughter, Eunice M. Royce, was not, for the years 1945 to 1949, inclusive, a bona fide partner in the partnership known as the Yellow Cab Company of Seattle and that the income reported by the said Dora F. Royce and the said Eunice H. Royce for the said years was includible in the income of petitioner.

(k) In April, 1944, petitioner was a stockholder in the Yellow Cab Company of Seattle (Washington), a Washington corporation. Prior to April 30, 1944, petitioner made a gift of 402½ shares of his said stock to Dora F. Royce and of 700 shares of his said stock to himself as trustee under a formal declaration of trust for Eunice Mae Royce, his minor daughter.

(l) Said Yellow Cab Company was liquidated on

the 30th day of April, 1944, and all of its assets of every kind and character were conveyed to the then stockholders of record including the said Dora F. Royce and Eunice Mae Royce. On the 1st day of May, 1944, all of the persons who had been stockholders of said Yellow Cab Company, including the said Dora F. Royce and Eunice Mae Royce, conveyed the said property to the Yellow Cab Company of Seattle, a partnership. The said Dora F. Royce and Eunice Mae Royce really intended to be, and all members of the partnership intended them to be partners in said partnership and all the members thereof entered into a formal partnership agreement and publicly proclaimed themselves to be partners. They were and are partners for Federal Tax as well as other purposes.

(m) On the books of the said corporation, Yellow Cab Company of Seattle, prior to its dissolution, was an account titled "Good Will" in the amount of \$150,738.54. By action of the Board of Directors of said company at a meeting held on the 7th day of April, 1944, the Directors properly determined that all except the item of \$6,412.30 carried as good will had no tangible or realizable value, and they instructed the company's accountant to write off this item as having no value except for said sum of \$6,412.30.

(n) The returns of petitioner, Dora F. Royce and Eunice Mae Royce for the year 1944 included the gain realized from the liquidation of said Yellow Cab Company based upon the elimination of said item of Good Will to the extent set forth and

a reduction of the company's assets to their then fair market value.

(o) Prior to August 1, 1942, petitioner transferred 14,000 shares of his stock in the Yellow Cab Company, an Oregon corporation, to Dora F. Royce, petitioner's wife. Said transfer of stock was complete, irrevocable and without reservation and Dora F. Royce became the owner of said stock which represented 23.06% of the total stock outstanding.

(p) On July 31, 1942, the said corporation was liquidated and on August 1, 1942, the Yellow Cab Company of Portland, a partnership, was formed. This partnership was composed of the persons who were stockholders of record of the said corporation on the date of liquidation. Each said persons transferred to the partnership his or her interest in the assets received by them from the liquidation of the Yellow Cab Company to the partnership. A formal partnership agreement was entered into and duly executed and the public was informed of the formation of the partnership and of its existence as required by law.

(q) Dora F. Royce intended to be, and the members of the partnership intended her to be a partner in said Yellow Cab Company of Portland, and she was and still is a partner therein for Federal Tax as well as other purposes.

(r) On or about the 28th day of November, 1942, petitioner and B. Royce purchased the partnership interests of Charles Keffer and C. H. Lutton in the Yellow Cab Company of Portland for a

cash consideration. At the same time, the partnership entered into a profit sharing agreement with the said Charles Keffer and C. H. Luton whereby each would be entitled to a certain percentage of the partnership profits thereafter as long as it was mutually agreeable that the said individuals continued in the employment of the partnership. Percentage of profit payments made under these agreements were properly deducted by the partnership in computing its net income for all the years herein involved.

(s) Petitioner properly carried over a capital loss to the year 1944 in the amount of \$12,154.35.

(t) The Hippodrome Amusement Company, an Oregon corporation, owns property in Seaside, Oregon, located in the center of the city. For a number of years the company known as Oregon Motor Stages has been having difficulty with the sale of tickets in that city and the stockholders of the Hippodrome Amusement Company have been contemplating putting up a modern building on their Seaside property which would house the present facilities and accommodations and would also provide a downtown ticket office for said Oregon Motor Stages. The Hippodrome company had, therefore, been accumulating its funds for that purpose, but the construction of a building in accordance with the plan of the company was being held in abeyance in the anticipation that building conditions would improve sufficiently so as to enable the company to construct a building upon a more reasonable basis of cost.

(u) The Hippodrome Amusement Company advanced to petitioner in 1945 the sum of \$20,000.00 from its said building funds as a temporary loan and/or until such time as the said company's building program could be put into effect. This sum of \$20,000.00 was not a dividend but was borrowed by petitioner from the company and petitioner is fully obligated to return it to the company upon demand. There are three other stockholders in the Hippodrome Amusement Company besides petitioner, and said loan bore no relation to the stock ownership.

(v) During the year 1945, petitioner and a number of associates entered into negotiations with the then stockholders of Oregon Motor Stages for the acquisition of all of the capital stock of said corporation. There were outstanding at that time 750 shares of stock of said company and the price upon which negotiations were based was \$1,000.00 per share. Petitioner, B. Royce, Albert L. Schneider and R. T. Jacob began preparations for the acquisition of said stock whereupon one L. R. Bentson of Vancouver, B. C., who was a relative of petitioner and B. Royce, informed the group that he desired to acquire a portion of the stock of said company and he agreed to and did purchase 350 shares of said stock.

(w) With regard to the acquisition of his stock, the said Mr. Bentson advised the group that his funds were in Canada and were blocked and, therefore, that it would be necessary for him to make arrangements in the States to finance his purchase. Accordingly, a loan was negotiated on his behalf

with the American Business Credit Corporation. Petitioner loaned his stock as an accommodation to be pledged with Mr. Bentson's stock as security for said loan, and petitioner affixed his signature to the note as guarantor for Mr. Bentson.

After the conclusion of World War II in August, 1945, Mr. Bentson became apprehensive that the earnings of Oregon Motor Stages might be drastically curtailed and that his investment might not prove as profitable as he had anticipated. Mr. Bentson thereupon made an offer to the corporation to surrender his 350 shares of stock upon the corporation paying the interest on his obligation and liquidating the loan obtained from the American Business Credit Corporation. The Board of Directors of the corporation determined that the purchase of the stock by the company was the prudent course to take and the offer of Mr. Bentson was accepted. Upon the surrender of his shares of stock, Oregon Motor Stages issued to Mr. Bentson a check for the sum of \$350,000.00 which said check the said Mr. Bentson delivered to the American Business Credit Corporation in payment of his loan.

(x) Petitioner did not receive any portion of the stock surrendered to the company by Mr. Bentson nor did he receive any payment of any kind from the corporation in connection with the surrender of the stock by Mr. Bentson.

(y) In addition to the \$350,000.00 paid to Mr. Bentson by the Oregon Motor Stages, the said company paid interest to the American Business Credit

Corporation and attorneys fees in the respective amounts of \$8,054.80 and \$2,135.41. No part of said payments were made either directly to petitioner or indirectly in satisfaction of petitioner's personal liability.

(z) For the year 1945 the Commissioner determined that the Yellow Cab Company of Portland had claimed excessive depreciation in the amount of \$10,213.38, in the amount of \$3,034.93 for the year 1946 and in the amount of \$9,750.67 for the year 1947.

(aa) The Yellow Cab Company of Portland has, for a number of years, followed the consistent practice of using a straight line method of depreciation and completely writing off all of its taxi-cabs over a four year period. The depreciation claimed by the Yellow Cab Company of Portland constituted a reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence), under normal circumstances.

(bb) During the calendar year 1945 petitioner expended the total amount of \$500.00 in making charitable contributions and properly claimed that amount on his return for said year as a contributions deduction.

(cc) During the calendar year 1947, the City of Portland assessed a city 2% gross revenue tax on the partnership known as the Yellow Cab Company of Portland in the amount of \$9,899.71. This said sum was accrued on the books of the Yellow Cab Company of Portland in the year 1947 and was claimed by said partnership as a deduction on its

with the American Business Credit Corporation. Petitioner loaned his stock as an accommodation to be pledged with Mr. Bentson's stock as security for said loan, and petitioner affixed his signature to the note as guarantor for Mr. Bentson.

After the conclusion of World War II in August, 1945, Mr. Bentson became apprehensive that the earnings of Oregon Motor Stages might be drastically curtailed and that his investment might not prove as profitable as he had anticipated. Mr. Bentson thereupon made an offer to the corporation to surrender his 350 shares of stock upon the corporation paying the interest on his obligation and liquidating the loan obtained from the American Business Credit Corporation. The Board of Directors of the corporation determined that the purchase of the stock by the company was the prudent course to take and the offer of Mr. Bentson was accepted. Upon the surrender of his shares of stock, Oregon Motor Stages issued to Mr. Bentson a check for the sum of \$350,000.00 which said check the said Mr. Bentson delivered to the American Business Credit Corporation in payment of his loan.

(x) Petitioner did not receive any portion of the stock surrendered to the company by Mr. Bentson nor did he receive any payment of any kind from the corporation in connection with the surrender of the stock by Mr. Bentson.

(y) In addition to the \$350,000.00 paid to Mr. Bentson by the Oregon Motor Stages, the said company paid interest to the American Business Credit

Corporation and attorneys fees in the respective amounts of \$8,054.80 and \$2,135.41. No part of said payments were made either directly to petitioner or indirectly in satisfaction of petitioner's personal liability.

(z) For the year 1945 the Commissioner determined that the Yellow Cab Company of Portland had claimed excessive depreciation in the amount of \$10,213.38, in the amount of \$3,034.93 for the year 1946 and in the amount of \$9,750.67 for the year 1947.

(aa) The Yellow Cab Company of Portland has, for a number of years, followed the consistent practice of using a straight line method of depreciation and completely writing off all of its taxi-cabs over a four year period. The depreciation claimed by the Yellow Cab Company of Portland constituted a reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence), under normal circumstances.

(bb) During the calendar year 1945 petitioner expended the total amount of \$500.00 in making charitable contributions and properly claimed that amount on his return for said year as a contributions deduction.

(cc) During the calendar year 1947, the City of Portland assessed a city 2% gross revenue tax on the partnership known as the Yellow Cab Company of Portland in the amount of \$9,899.71. This said sum was accrued on the books of the Yellow Cab Company of Portland in the year 1947 and was claimed by said partnership as a deduction on its

return for the said year, in accordance with the method of accounting regularly employed in keeping its books of account.

(dd) The respondent has disallowed \$7,500.00 of the repair expenses claimed by the Yellow Cab Company of Portland, a partnership, as a deduction for the calendar year 1947, said disallowance being based upon the theory that the said company made capital expenditures of \$100.00 per cab sold in that year in preparing and painting each cab for sale.

(ee) The Yellow Cab Company of Portland, a partnership, maintains its own garage and staff of mechanics and makes any and all repairs necessary to its cabs therein. The repair and painting expenses incurred by the said company represent repairs required in the ordinary course of business, and were charged to the account of repairs and maintenance in accordance with the method of accounting regularly employed and established many years before.

(ff) All proceeds of sales of cabs made by the Yellow Cab Company of Portland, a partnership, during the calendar year 1947 are correctly recorded on the books of the said company and were properly reported on the tax return of the said company for the calendar year 1947.

(gg) Any common stock of Alder Gold-Copper Company received by petitioner in the calendar year 1947 represented stock issued to him for monies paid in or advanced by him on behalf or in connection with the said corporation. Also, the

said common stock of the said corporation did not have any fair or market value during said year 1947. Petitioner did not receive any said stock as compensation for services.

(hh) In July, 1946, petitioner purchased common and preferred stock in Oregon Distillery Co. of Hood River, and paid the sum of \$10,000.00 therefor.

(ii) On November 2, 1947, the said Oregon Distillery Co. of Hood River became insolvent and its affairs were wound up. Petitioner's common and preferred stock in said company became worthless in said year, but petitioner inadvertently failed to claim any loss in connection therewith on his return for said year.

(jj) For the years 1945 and 1947, petitioner reported on his estimated tax the full amount of tax estimated to be due and owing for said years and the penalty proposed for said years is without foundation.

Wherefore, petitioner prays that the Court hear this proceeding and determine that there is no deficiency in income taxes for any of the years 1944, 1945, 1946 and 1947 and that petitioner is not subject to any penalties determined by the respondent or any part thereof.

/s/ R. T. JACOB.

Of Counsel:

Jacob, Jones & Brown.

Duly Verified.

## EXHIBIT "A"

REGIONAL  
1112 Cascade Building  
Portland 4, Oregon  
September 28, 1953

ARC-AP:SF

Port:VEV:90D

Mr. Ezra Royce  
628 N.W. Sixth Avenue  
Portland 9, Oregon

Dear Mr. Royce:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, 1945, 1946, and 1947, discloses deficiencies in the total amount of \$825,924.47 and penalties in the total amount of \$94,609.68, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D.C., for a redetermination of the deficiencies. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commission, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,  
Commissioner,

/s/ By A. N. Williams,  
Associate Chief, Appellate Division

Enclosures:

Statement

Form 1276      Agreement Form 870

VEVelene la

STATEMENT  
Mr. E. Royce  
628 N. W. Sixth Avenue  
Portland, Oregon

Income tax liability for the taxable years ended  
December 31, 1944, 1945, 1946 and 1947.

Year	Deficiency	Penalty Sec. 293(b)	Penalty Sec. 294(d)(2)
1944.....	\$ 74,286.82		
1945.....	495,661.69		\$31,467.14
1946.....	143,714.83		
1947.....	112,261.13	\$56,130.57	7,011.97
<hr/>	<hr/>	<hr/>	<hr/>
Totals....	\$825,924.47	\$56,130.57	\$38,479.11

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated February 12, 1951, and to your protest dated September 5, 1951.

The 50% penalty has been asserted for the taxable year ended December 31, 1947, in accordance with the provisions of Section 293(b) of the Internal Revenue Code.

The 6% penalty for substantial underestimate of estimated tax has been asserted for the taxable years ended December 31, 1945 and 1947, in accordance with the provisions of Section 294 (d)(2) of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Robert T. Jacob, 917 Public Service Building, Portland 4, Oregon, in accordance with the authority contained in the power of attorney executed by you.

The records of this office show that on and prior to April 13, 1944, Lloyd W. Hendrickson and Sue Hendrickson, husband and wife, were the owners of certain real and personal properties located at Northwest 21st and Burnside Streets, Portland, Oregon, the real property being otherwise described as a portion of Block 31, Kings Second Addition to the City of Portland. On that date, April 13, 1944, Mr. and Mrs. Hendrickson executed a document designated as an "Option to Buy" whereby they gave you an option to purchase said real and personal properties on or prior to April 19, 1949, in accordance with the terms and conditions therein stated. The option agreement recited that it was

"understood that said property" was then "under lease for a term" which would expire on April 19, 1949, and that the option therein provided for could be exercised only "after all rentals reserved in said leases" were fully paid at the time provided in the lease or in advance thereof. The option agreement further stated that it was expected that part of the obligations then outstanding against the property would remain unpaid at the expiration of the term of the lease. By the terms of the agreement, if you exercised your election to purchase, you would be required to pay the sum of \$35,000.00 less any outstanding indebtedness assumed by you, plus interest thereon.

On or about April 18, 1944, you, A. L. Schneider and Harold Murphy organized the Burnside Realty, Inc., under the laws of Oregon, with an authorized capital stock of 30 common shares, par value \$50.00 per share, which was issued to you, Mr. Schneider and Mr. Murphy in equal one-third proportions. This corporation was purportedly organized for the purpose of continuing the operation of rental and amusement businesses theretofore conducted in and on the premises owned by Lloyd W. Hendrickson and his wife, Sue Hendrickson, at Northwest 21st and Burnside Streets, Portland, Oregon.

By the terms of an agreement entered into by and between Burnside Realty, Inc. and Lloyd W. Hendrickson and Sue Hendrickson, husband and wife, on or about April 29, 1944, Burnside Realty, Inc., as lessee, agreed to lease the properties at

Northwest 21st and Burnside Street, Portland, Oregon, from Mr. and Mrs. Hendrickson, as lessors, for a term of five years from April 19, 1944, at a monthly rental of \$1,500.00.

On or about April 26, 1944, Lloyd W. Hendrickson and Sue Hendrickson placed in escrow with the Bank of California, N.A., Portland, Oregon, the option agreement dated April 13, 1944, together with a warranty deed also dated April 13, 1944, and a bill of sale dated April 24, 1944, executed by them, whereby they conveyed title to the properties at Northwest 21st and Burnside Streets to you.

Prior to December 6, 1945, Lloyd W. Hendrickson and Sue Hendrickson were divorced. By virtue of an agreement entered into on or about that date your brother, B. Royce, acquired by assignment the rights, title and interest to the sum which would be due to Lloyd W. Hendrickson under the option agreement of April 13, 1944, in the event that you elected to exercise your right to purchase the property under that option.

On or about April 15, 1949, you advised the escrow agent, the Bank of California, N.A., Portland, Oregon, that you would exercise the option to purchase the property at Northwest 21st and Burnside Streets, Portland, in accordance with the terms of the option agreement dated April 13, 1944. Prior thereto Burnside Realty, Inc., had made sixty monthly payments of \$1,500.00 each, or \$90,000.00 to Lloyd W. and Sue Hendrickson or their assign-

ees. At the date of exercising the option, April 15, 1949, (1) the mortgage indebtedness on the property had been reduced to \$21,937.70, (2) by the terms of the option agreement dated April 13, 1944, the sum of \$6,531.15 was due to Sue Miller (formerly Sue Hendrickson) and (3) by the terms of the option agreement and by reason of the fact that your brother, B. Royce, had acquired by assignment the rights of Lloyd W. Hendrickson under that agreement, the sum of \$6,531.15 was due to B. Royce.

The Bureau holds that you acquired the property at Northwest 21st and Burnside Streets, Portland, Oregon, by purchase in April, 1944 for a total consideration of \$125,000.00, computed as follows:

Sixty monthly payments of rent by Burnside Realty,

Inc. of \$1,500.00 each.....	\$ 90,000.00
Balance due on mortgage April 15, 1949.....	21,937.70
Payment to Sue Miller (formerly Sue Hendrickson).....	6,531.15
Liability to B. Royce.....	6,531.15
 Total .....	 <hr/>
	\$125,000.00

The Bureau further holds that the rental payments made by Burnside Realty, Inc., pursuant to the lease agreement dated April 29, 1944, on such property, reduced by allowable depreciation, constitutes taxable income to you. Taxable income reported for the years 1944 to 1947, inclusive, has, therefore, been increased by rental payments in the amounts shown below:

Year	Rent	Depreciation	Increase in income
1944.....	\$12,600.00	\$1,706.68	\$10,893.32
1945.....	18,000.00	2,560.00	15,440.00
1946.....	18,000.00	2,560.00	15,440.00
1947.....	18,000.00	2,560.00	15,440.00
 Total .....	 <u>\$66,600.00</u>	 <u>\$9,386.68</u>	 <u>\$57,213.32</u>

The records of this office show (1) that your wife, Dora F. Royce, filed separate income tax returns for the years 1944 to 1947, inclusive, (2) that in her returns for the years 1944 to 1947, inclusive, she reported as her share of the income of the Yellow Cab Company of Portland, Oregon, her distributive share of the income of that partnership shown by the partnership returns of income filed by it for such calendar years, and (3) that in her returns for the years 1945 to 1947, inclusive, she reported as her share of the income of the Yellow Cab Company of Seattle, Washington, the portion of the income of that partnership shown by the partnership return of income filed by it for the fiscal years ended April 30, 1945 to 1947, inclusive, as distributable to her.

The records of this office further show that income tax returns were filed in the name of your daughter, Eunice M. Royce, for the calendar years 1944 and 1946 to 1949, inclusive, which were executed by you as trustee; with respect to the year 1945, an unsigned return form was filed.

In each of the returns filed by or for Eunice M. Royce for the years 1945 to 1949, inclusive, there was reported as her income the sum which the Yel-

low Cab Company of Seattle, Washington, reported in partnership returns of income filed by it for the fiscal years ended April 30, 1945 to 1949, inclusive, as income distributable to her.

This office holds that neither Dora F. Royce nor Eunice M. Royce was a bona fide partner in either the Yellow Cab Company of Portland or the Yellow Cab Company of Seattle for any of the years under review and that the sums reported by them as their distributive shares of partnership incomes are taxable to you.

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$ 87,106.76
Unallowable deductions and additional income:	
(a) Rental income .....	\$10,893.32
(b) Capital gains .....	32,674.55
(c) Partnership income .....	52,366.85      95,934.72
Total .....	\$183,041.48
Non-taxable income and additional deductions:	
(d) Contributions .....	\$      58.71
(e) Taxes .....	1.00
(f) Miscellaneous .....	.02      59.73
Net income adjusted .....	\$182,981.75

Explanation of Adjustments

(a) On the basis of the facts and for the reasons stated above, it has been determined that as a result of rental payments made during the year by Burnside Realty, Inc., you realized income not reported in your return in the amount of \$10,893.32.

(b) In your return for the calendar year 1944, you reported a net loss from the sales or exchanges of capital assets in the amount of \$535.23. It has

been determined that you in fact realized a net gain from such transaction in the amount of \$32,139.32. Therefore, your net income has been increased by the amount of \$32,674.55, computed as follows:

(1) Gain on liquidation of Yellow Cab Co. of Seattle	\$26,763.68
(2) Partnership capital gain (Yellow Cab Co. of Port-	
land) reported by Dora F. Royce .....	1,076.82
(3) Decrease in capital loss carry-over.....	4,834.05
 Total .....	 <hr/>
	\$32,674.55

(1) This office holds that you realized in 1944 a capital gain on the liquidation of the Yellow Cab Co. of Seattle in the amount of \$57,954.70, and that one-half of that sum, or \$28,977.35, is to be taken into account in accordance with the provisions of Section 117 of the Internal Revenue Code. Inasmuch as you reported \$2,213.67 on the liquidation of this corporation, your reported capital gain has been increased by \$26,763.68.

(2) In her return for the year 1944, your wife, Dora F. Royce, reported the sum of \$1,076.82 as her share of the capital gains realized during the taxable year by the Yellow Cab Co. of Portland. Since this office holds that Mrs. Royce was not a valid partner, the sum reported by her as capital gain is considered taxable to you.

(3) In your return you reported a capital loss carry-over of \$12,154.35. It has been determined that the correct carry-over is \$7,320.31. The carry-over loss claimed has, therefore, been reduced by \$4,834.05.

(c) In your return filed for the calendar year 1944, you reported the sum of \$58,483.85 as your distributive share of ordinary partnership income

reported in the return filed by the Yellow Cab Company, Portland, Oregon, for the calendar year 1944. It has been determined that your correct distributive share of such partnership income is \$110,850.70, computed as follows:

Distributive share reported.....	\$ 58,483.85
(A) Distributive share reported by your wife	50,060.79
(B) Cost of partnership interest.....	2,306.06
Corrected distributive share.....	\$110,850.70

Your taxable income as reported has, therefore, been increased by \$52,366.85.

(A) For the reasons heretofore stated, this office holds that the income reported by your wife, Dora F. Royce, as her distributive share of the income of the partnership, Yellow Cab Company of Portland, is taxable to you.

(B) The record shows that prior to August 1, 1942, Charles W. Keffer and C. H. Luton, were the owners of .659% and .906% interests, respectively, in the partnership, Yellow Cab Company of Portland. On or about that date, August 1, 1942, you and your brother, B. Royce, purchased the interests of these individuals under an agreement whereby *inter alia*, each of the vendors was to receive one percent of the partnership net profits for a period of five years. During the year under review, payments to them were charged to partnership operations as compensation.

This office holds that payments made by the partnership under the contract and in the manner referred to in the preceding paragraph were capi-

tal in nature and not deductible in computing partnership income. The effect of this finding is to increase your reported income for the year 1944 by \$2,306.06.

(d) Since it has been determined that the income of the partnership Yellow Cab Company, Portland, Oregon, reported by your wife, Dora F. Royce, is taxable to you, the distributive share of partnership contributions paid by such partnership and claimed as a deduction in the separate return filed by your wife is held to be allowable to you as a deduction in the amount of \$58.71.

(e) Due to a mathematical error in your return, you claimed deduction for taxes totaling \$644.16, understated in the amount of \$1.00. An additional deduction in that amount is allowed.

(f) You claimed miscellaneous deductions in your return filed for the calendar year 1944 which total \$286.76. By reason of an error in addition the total of such expenses was shown in the amount of \$286.74. An additional deduction of \$.02 is allowable.

#### Computation of Income Tax

Net income adjusted.....	\$182,981.75
Less: Excess of net long-term capital gain over net short-term capital loss.....	32,139.32
<hr/>	
Ordinary net income .....	\$150,842.43
Less: Normal tax exemption.....	500.00
<hr/>	
Balance subject to normal tax.....	\$150,342.43
Normal tax—3% of \$150,342.43.....	4,510.27
Ordinary net income.....	\$150,842.43
Less: Surtax exemptions.....	1,500.00
<hr/>	
Balance subject to surtax.....	\$149,342.43

## Computation of Income Tax—(Continued)

Surtax .....	\$111,234.76
Partial tax .....	\$115,745.03
Plus: 50% of \$32,139.32.....	16,069.66
Income tax liability.....	\$131,814.69
Income tax liability disclosed by return, Account No. N9-9000025.....	57,527.87
Deficiency in income tax.....	\$ 74,286.82

## Taxable Year Ended December 31, 1945

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$120,480.98
Unallowable deductions and additional income:	
(a) Dividends (Hippodrome Amusement Co.) .....	\$ 20,000.00
(b) Income realized from Oregon Motor Stages stock transaction .....	350,000.00
(c) Other income (Oregon Motor Stages) .....	8,145.43
(d) Rental income .....	15,440.00
(e) Capital gains .....	130.29
(f) Partnership income .....	142,006.34
(g) Contributions .....	367.50 536,089.56
Total .....	\$656,570.54
Non-taxable income and additional deductions:	
(h) Interest expense .....	7,479.45
Net income adjusted.....	\$649,091.09

## Explanation of Adjustments

(a) It has been determined that on December 28, 1945, the Hippodrome Amusement Company, an Oregon corporation, of which you owned approximately 61.76% of the outstanding stock, issued its check payable to you in the amount of \$20,000.00 which has not been repaid. This office holds that

such payment was in effect a distribution of the earnings and profits of such corporation to you, and as such is taxable to you as a dividend. Your net income has accordingly been increased by the amount of \$20,000.00.

(b) The records of this office show that prior to July 2, 1945, you, your brother B. Royce, Robert T. Jacob, Fred C. Niederkrome and A. L. Schneider negotiated for the purchase of the capital stock of Oregon Motor Stages, Portland, Oregon, an Oregon corporation engaged in the business of bus transportation. The outstanding stock of that corporation then consisted of 750 common shares, par value \$100.00 a share.

As a result of the negotiations referred to above, on or about July 2, 1945, you and your associates purchased shares of Oregon Motor Stages in the number and at the cost shown below:

	Shares	Cost
E. Royce .....	145	\$145,000.00
B. Royce .....	50	50,000.00
Robert T. Jacob.....	100	100,000.00
Fred C. Niederkrome.....	55	55,000.00
A. L. Schneider.....	50	50,000.00
 Total .....	 400	 \$400,000.00
	<hr/>	<hr/>

In accordance with the plan adopted, the remaining 350 shares of Oregon Motor Stages stock were acquired in the name of your uncle, L. R. Bentson, 411 East 15th Street, North Vancouver, B. C. in consideration of payment of \$350,000.00 in cash. Such payment was made from the proceeds of a

loan obtained by you, acting for yourself and your above-named associates, through the Portland Branch of the American Business Credit Corporation, New York City, on a 90-day note which was signed by you and L. R. Bentson and which was collateralized by deposit of the entire 750 shares of stock of Oregon Motor Stages.

On or about September 6, 1945, pursuant to the plan adopted by you and your associates, as aforesaid, Oregon Motor Stages acquired the 350 shares of its own stock then standing in the name of L. R. Bentson and issued its check to him in the sum of \$350,000.00. This check was immediately endorsed and delivered to the American Business Credit Corporation in satisfaction of the 90-day note signed by you and L. R. Bentson.

It has been determined that it was not intended that L. R. Bentson should acquire, nor did he at any time acquire, any bona fide or actual beneficial interest in the stock of Oregon Motor Stages.

It has been further determined that the accumulated earnings and profits of Oregon Motor Stages available for distribution as dividends during the year 1945 were in excess of \$350,000.00.

This office holds that the transaction whereby Oregon Motor Stages acquired 350 shares of its capital stock, which were issued in the name of L. R. Bentson, for the sum of \$350,000.00, was consummated at such a time and in such a manner as to result in the realization of taxable income to you in the amount of \$350,000.00.

(c) It has been further determined that in connection with the transaction whereby Oregon Motor Stages acquired 350 shares of its stock in the manner stated above, that corporation paid interest to the American Business Credit Corporation and attorney fees in the respective total amounts of \$8,054.80 and \$2,135.41. With respect to these sums, this office holds that to the extent of \$8,054.80 and \$90.63 respectively, the payment of interest and attorney fees was in satisfaction of your personal liability, incurred in connection with the transactions whereby you acquired the stock of Oregon Motor Stages. Your reported income has, therefore, been increased by \$8,145.43.

(d) On the basis of the facts and for the reasons stated above, it has been determined that as a result of rental payments made during the year by Burnside Realty, Inc., you realized rental income not reported in your return in the amount of \$15,440.00.

(e) In her return for the year 1945, your wife, Dora F. Royce, reported the sum of \$130.29 as her share of capital gains realized during the taxable year by the Yellow Cab Company of Portland. Since this office holds that Mrs. Royce was not a valid partner, the sum reported by her as capital gain is considered taxable to you.

(f) In your return for the calendar year 1945, you reported the sum of \$113,530.63 as your distributive share of the incomes of certain partnerships in which you were interested. The following

tabulation shows the names and addresses of such partnerships, your distributive share of incomes reported, the incomes as determined by this office and the increase or decrease:

Name of Partnership	Income Reported	Income Corrected	Increase (Decrease)
Yellow Cab Company, Portland, Oregon .....	\$ 79,381.28	\$138,407.33	\$ 68,026.05
Yellow Cab Company, Seattle, Washington ....	20,304.80	94,981.77	74,676.97
Bend Recreation Center Bend, Oregon .....	( 1,365.63)	( 1,991.52)	( 625.89)
Pilot Butte Transit Lines Bend, Oregon .....	x x x	( 70.79)	( 70.79)
Gray Line Motor Tours Seattle, Washington ....	17,973.14	17,973.14	
Royce Brothers Portland, Oregon .....	3,307.22	3,307.22	
Queen City Garage Seattle, Washington ....	2,929.82	2,929.82	
Totals .....	\$113,530.63	\$255,536.97	\$142,006.34

The adjustments of your income attributable to the revision of the partnership income of the Yellow Cab Company of Portland and the Yellow Cab Company of Seattle are shown below:

Yellow Cab Company of Portland	
Ordinary net income reported in partnership return	\$261,251.95
Unallowable deductions and additional income:	
(1) Excessive depreciation .....	10,213.38
(2) Cost of partnership interest.....	5,349.32
Ordinary net income adjusted.....	\$276,814.65
Your distributive share of the above adjusted income	\$138,407.33

(1) It has been determined that the depreciation allowable on taxicabs is in the amount of \$1,764.80

rather than \$11,978.18 as claimed and the net income of the partnership has been increased accordingly in the amount of \$10,213.38.

(2) On the basis of the facts and for the reasons stated heretofore, it has been determined that the sum of \$5,349.32 charged to the partnership operation for the year 1945 as compensation to Charles W. Keffer and C. H. Luton, was capital in nature and not deductible in computing partnership income.

Yellow Cab Company of Seattle	
Distributive share reported.....	\$20,304.80
(1) Distributive share reported by your wife.....	27,264.06
(2) Distributive share reported by your daughter, Eunice M. Royce .....	47,412.61
Corrected distributive share.....	<hr/> \$94,981.77*

\*Total reported understated by \$.30.

(1) and (2). For the reasons heretofore stated, this office holds that the income reported by your wife, Dora F. Royce and your daughter, Eunice M. Royce, as their distributive shares of the income of the partnership Yellow Cab Company of Seattle is taxable to you.

(g) In your return for the calendar year 1945, you claimed a deduction for contributions in the amount of \$500.00. Inasmuch as you have failed to substantiate any such deductions in excess of your distributive share of contributions paid by the partnership Yellow Cab Company of Portland, Oregon, in the amount of \$132.50, the sum of \$367.50 is held to be unallowable.

(h) It has been determined that of the amount

of \$8,054.80 heretofore held under paragraph (c) above to be taxable to you, the sum of \$7,479.45 is allowable as a deduction for interest paid in 1945.

Computation of Income Tax

Net income as adjusted.....	\$649,091.09	
Less: Excess of net long-term capital gain over net short-term capital loss .....	2,502.39	
Ordinary net income.....	\$646,588.70	
Less: Normal tax exemption.....	500.00	
Balance subject to normal tax.....	\$646,088.70	
Normal tax (3% of \$646,088.70).....	19,382.66	
Ordinary net income.....	\$646,588.70	
Less: Surtax exemptions.....	1,500.00	
Balance subject to surtax.....	\$645,088.70	
Surtax on \$200,000.00 equals.....	156,820.00	
\$445,088.70 @ 91% equals....	405,030.72	\$561,850.72
Partial tax .....	\$581,233.38	
Plus (50% of \$2,502.39).....	1,251.20	
Income tax liability.....	\$582,484.58	
Income tax liability disclosed by return, Account No. 3200604.....	86,822.89	
Deficiency in income tax.....	\$495,661.69	
Penalty, Sec. 294(d)(2) Internal Revenue Code		
Income tax liability as adjusted.....	\$582,484.58	
Less: Withholding tax.....	None	
Paid on estimated declaration.....	\$58,032.28	58,032.28
Difference .....	\$524,452.30	
Penalty (6% of \$524,452.30).....	31,467.14	

Taxable Year Ended December 31, 1946

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$118,857.41
Unallowable deductions and additional income:	

(a) Rental income .....	\$ 15,440.00
(b) Partnership income .....	152,961.16
	168,401.16
Total .....	\$287,258.57

## Non-taxable income and additional deductions:

(c) Capital gains .....	\$468.06
(d) Contributions .....	171.30
(e) Interest expense .....	288.20 \$ 927.56

Net income adjusted .....	\$286,331.01
---------------------------	--------------

## Explanation of Adjustments

(a) On the basis of the facts and for the reasons stated above, it has been determined that as a result of the rental payments made during the year by Burnside Realty, Inc., you realized rental income not reported in your return in the amount of \$15,440.00.

(b) In your return for the calendar year 1946, you reported the sum of \$110,559.98 as your distributive share of the incomes of certain partnerships in which you were interested. The following tabulation shows the names and addresses of such partnerships, your distributive share of incomes reported, the incomes as determined by this office and the increase or decrease.

Name of Partnership	Income Reported	Income Corrected	Increase (Decrease)
Yellow Cab Company Portland, Oregon .....	\$ 65,584.76	\$125,734.41	\$ 60,149.65
Yellow Cab Company Seattle, Washington ....	23,480.88	116,565.18	93,084.30

Name of Partnership	Income Reported	Income Corrected	Increase (Decrease)
Gray Line Motor Tours Seattle, Washington ....	12,598.66	12,598.66	
Royce Brothers Portland, Oregon .....	5,989.42	5,989.42	
Queen City Garage Seattle, Washington ....	2,906.26	3,014.95	108.69
Bend Recreation Center Bend, Oregon .....		( 381.48)	( 381.48)
Totals .....	\$110,559.98	\$263,521.14	\$152,961.16

The adjustments of your income attributable to the revision of the partnership income of Yellow Cab Company of Portland are shown below:

Yellow Cab Company of Portland	
Ordinary net income reported in accordance with return .....	\$243,447.71
Unallowable deductions and additional income:	
(1) Excessive depreciation .....	3,034.93
(2) Cost of partnership interest.....	4,986.38
Ordinary net income adjusted.....	\$251,468.82
Your distributive share of the above adjusted income	\$125,734.41

(1) It has been determined that the depreciation allowable on taxicabs is in the amount of \$2,102.68 rather than \$5,137.61 as claimed and the net income of the partnership has been increased accordingly in the amount of \$3,034.93.

(2) On the basis of the facts and for the reasons stated heretofore, it has been determined that the sum of \$4,986.38 charged to the partnership operations for the year 1946 as compensation to Charles W. Keffer and C. H. Luton, was capital in nature and not deductible in computing partnership income.

(c) It has been determined that your taxable net capital gains for the calendar year 1946 were in the amount of \$7,023.09 rather than \$7,491.15 as reported in your return. Your net income has therefore been decreased by the amount of \$468.06, computed as follows:

(1) Yellow Cab Co. of Portland.....	\$210.05
(2) Yellow Cab Co. of Seattle.....	(778.11)
(3) Mathematical error .....	100.00
Total .....	(\$468.06)

(1) It has been determined that your distributive share of long-term capital gains from the partnership Yellow Cab Company of Portland, Oregon, was in the amount of \$287.50 rather than \$77.45 as reported in your return and your reported capital gain from such partnership has therefore been increased by the amount of \$210.05.

(2) In your return filed for the calendar year 1946, you reported a net loss of \$37.70 as your distributive share of the capital losses of the partnership Yellow Cab Co. of Seattle. It has been determined that your distributive share of capital losses from such partnership was in the amount of \$815.81 and your reported capital gain has therefore been decreased by the amount of \$778.11.

(3) On Schedule "D" of your return filed for the calendar year 1946, you reported a net short-term capital loss in the amount of \$2,383.30. The correct sum of such loss as reported was in the amount of \$2,283.30. Your reported net income has therefore been decreased by the amount of \$100.00.

(d) Since this office holds that your wife, Dora F. Royce is not a valid partner of Yellow Cab Co. of Portland and that your wife, Dora F. Royce and your daughter, Eunice M. Royce, are not valid partners of the Yellow Cab Company of Seattle, the distributive share of partnership contributions allocated to them, totaling \$171.30, has been allowed as a deduction to you.

(e) You failed to claim as a deduction in your 1946 return, interest in the amount of \$288.20 paid in 1946 on your 1945 income tax liability. An additional deduction of \$288.20 has therefore been allowed.

#### Computation of Income Tax

Net income as adjusted.....	\$286,331.01
Loss: Excess of net long-term capital gain over net short-term capital loss.....	7,023.09
Ordinary net income.....	\$279,307.92
Less: Exemptions .....	1,500.00
Balance subject to tentative tax.....	\$277,807.92
Tentative tax .....	227,625.21
Less: 5% of tentative tax.....	11,381.26
Partial tax .....	\$216,243.95
Plus (50% of \$7,023.09).....	3,511.55
Income tax liability.....	\$219,755.50
Income tax liability disclosed by return, Account No. 3014034.....	76,040.67
Deficiency in income tax.....	\$143,714.83

Taxable Year Ended December 31, 1947

## Adjustments to Net Income

Net income as disclosed by return, Form 1040..... \$ 68,218.74

## Unallowable deductions and additional income:

(a) Rental income .....	\$11,527.12
(b) Partnership income .....	99,757.32
(c) Capital gains .....	8,678.23
(d) Other income .....	22,000.00 \$141,962.67

Total ..... \$210,181.41

## Non-taxable income and additional deductions:

(e) Salary .....	300.00
(f) Abandonment loss .....	1,899.50 2,199.50

Net income adjusted..... \$207,981.91

## Explanation of Adjustments

(a) On the basis of the facts and for the reasons stated above, it has been determined that as a result of the rental payments made during the year by Burnside Realty, Inc., the marital community realized rental income not reported, in the amount of \$15,440.00, of which amount the sum of \$3,912.88 is taxable to your wife, Dora F. Royce, and \$11,527.12 is taxable to you.

(b) In your return for the calendar year 1947, you reported the sum of \$54,613.13 as your distributive share of the income of certain partnerships in which you were interested. The following tabulation shows the names and addresses of such partnerships, your distributive share of incomes reported, the incomes as determined by this office and the increase or decrease.

Name of Partnership	Year Ended	Income Reported	Income Adjusted	Increase or (Decrease)
Yellow Cab Company				
Portland, Ore.	12/31/47	\$25,673.03	\$ 62,678.02	\$ 37,004.99
Royce Brothers				
Portland, Ore.	12/31/47	3,376.55	4,154.20	777.65
East Side Buses				
Portland, Ore.	12/31/47	( 8,377.67)	( 11,170.53)	( 2,792.86)
Deluxe Attractions				
Portland, Ore.	12/31/47	( 7,778.82)	( 10,371.76)	( 2,592.94)
Yellow Cab Company				
Seattle, Wash.	4/30/47	17,739.40	89,790.87	72,051.47
Gray Line Motor Tours				
Seattle, Wash.	7/31/47	21,779.73	29,039.64	7,259.91
Queen City Garage				
Seattle, Wash.	8/31/47	2,200.91	3,043.23	842.32
Totals .....		\$54,613.13	\$167,163.67	\$112,550.54
Less: Amount taxable as community income of your wife as computed below .....			\$ 12,793.22	
Corrected partnership income .....			\$154,370.45	
Reported .....			54,613.13	
Increase .....			\$ 99,757.32	
Allocation of Community Income				
Yellow Cab Co., Portland....		\$62,678.02		
Royce Brothers .....		4,154.20		
East Side Buses.....		(11,170.53)		
Deluxe Attractions .....		(10,371.76)		
			\$45,289.93x½(185/365)—\$11,477.36	
Gray Line Motor Tours.....		29,039.64x½( 27/365)—\$ 1,074.07		
Queen City Garage.....		3,043.23x½( 58/365)—\$ 241.79		
Partnership income distributable to wife.....			\$12,793.22	

The adjustments of your income attributable to the revision of the partnership income of Yellow Cab Company of Portland are shown below:

## Yellow Cab Company of Portland

Ordinary net income as reported in partnership return \$ 95,297.06  
 Unallowable deductions and additional income:

(1) Depreciation .....	\$9,750.67
(2) Cost of partnership interest.....	2,908.60
(3) Accrued taxes and licenses.....	9,899.71
(4) Repairs .....	7,500.00

---

Ordinary net income adjusted..... \$125,356.04

Allocation: 50% to B. Royce .....	62,678.02
50% to Ezra Royce .....	62,678.02
Reported .....	25,673.03

---

Increase ..... \$ 37,004.99

(1) The depreciation allowable on taxicabs has been determined to be in the amount of \$20,615.82 rather than \$30,366.49 as claimed in the partnership return filed by the Yellow Cab Company of Portland and the ordinary net income of the partnership has therefore been increased by the amount of \$9,750.67.

(2) On the basis of the facts and for the reasons stated heretofore, it has been determined that the sum of \$2,908.60, charged to the partnership operations for the year 1947 as compensation to Charles W. Keffer and G. H. Luton was capital in nature and not deductible in computing partnership income.

(3) It has been determined that the accrued City 2% Gross Revenue Tax in the amount of \$9,899.71 claimed as a deduction in the return filed for the calendar year 1947 was being contested by the partnership and that the deduction is, therefore, unallowable.

(4) The deduction claimed in the partnership return filed for the calendar year 1947 as incurred in preparing used cabs for sale has been determined to be capital in nature to the extent of \$7,500.00, and not deductible as an ordinary and necessary business expense.

(c) It has been determined that your taxable net capital gain for the calendar year 1947 is in the amount of \$20,122.81 rather than \$11,444.58 as reported in your return and your net income has accordingly been increased by the amount of \$8,678.-23 computed as follows:

	Reported	Corrected
Yellow Cab Company, Seattle.....	\$ 2,680.05	\$ 7,943.89
Yellow Cab Company, Portland.....	6,388.73	10,448.65
Gray Line Motor Tours.....	695.77	695.77
East Side Buses.....	338.96	338.96
100 shares Hart Shaffner & Marx.....	450.00	250.00
100 shares 20th Century Fox.....	807.07	403.54
U. S. & Foreign Securities dividend.....	84.00	42.00
<hr/>		<hr/>
Totals .....	\$11,444.58	\$20,122.81
Reported .....		11,444.58
<hr/>		<hr/>
Increase .....		\$ 8,678.23

It has been determined that the Yellow Cab Company of Portland understated its reported sales of used taxicabs for the year 1947 in the amount of \$15,000.00. The reported income of the partnership has accordingly been increased by \$15,000.00 and is reflected in the amount of \$10,448.65 shown above as your corrected distributive share of capital gains from such partnership.

(d) The records of this office show that during the

calendar year 1947, you received 440,000 shares of the common stock of Alder Gold-Copper Company having a fair market value of \$.10 per share as compensation for services rendered. In your return for the calendar year 1947, you reported no income from this source. It is held that the receipt of such stock constitutes taxable income to the marital community to the extent of its fair market value and your reported net income for the calendar year 1947 is therefore increased by one-half of such income, or \$22,000.00.

(e) It has been determined that \$300.00 of the salary of \$700.00 reported in your return for the calendar year 1947 as received from the Blue Line Transportation Co. is taxable to your wife, Dora F. Royce, under the provisions of the Community Property Law of Oregon. Your reported net income is accordingly decreased by the amount of \$300.00.

(f) It has been determined that the expenditures incurred by you in the amount of \$1,899.50 in connection with purchasing timber in Panama is allowable as an abandonment loss in computing your taxable income for the calendar year 1947.

#### Computation of Income Tax

Net income as adjusted.....	\$207,981.91
Less: Excess of net long-term capital gain over net short-term capital loss.....	20,122.81
Ordinary net income.....	\$187,859.10
Less: Exemptions (3x\$500.00).....	1,500.00
Balance subject to tentative tax.....	\$186,359.10
Tentative tax .....	144,543.19
Less: 5% of tentative tax.....	7,227.16

## Computation of Income Tax—(Continued)

Partial tax .....	\$137,316.03
Plus: (50% of \$20,122.81).....	10,061.41
	<hr/>
Income tax liability.....	\$147,377.44
Income tax liability disclosed by return, Account No. 3008951.....	35,116.31
	<hr/>
Deficiency in income tax.....	\$112,261.13
	<hr/>
Penalty, Sec. 294(d)(2), Internal Revenue Code	
Income tax liability as adjusted.....	\$147,377.44
Less: Withholding tax ..... \$ 11.20	
Paid on estimated declaration..... 30,500.00	30,511.20
	<hr/>
Difference .....	\$116,866.24
Penalty (6% of \$116,866.24).....	\$ 7,011.97
Penalty Sec. 293(b) I.R.C. (50% of \$112,261.13).....	\$ 56,130.57

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

---

[Title of Tax Court and Docket No. 51527.]

## ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph I of the petition.
2. Admits the allegations contained in paragraph II of the petition.
3. Admits the allegations contained in paragraph III of the petition.
4. Denies that he erred in his determination of

the deficiencies in income tax and penalties as shown in the notice of deficiency from which the petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.

5.(a) and (b). Admits the allegations contained in paragraph V(a) and (b) of the petition.

(c) Admits the allegations contained in the first sentence of paragraph V(c) of the petition. Denies the remaining allegations contained in paragraph V(c) of the petition.

(d) and (e). Admits the allegations contained in paragraph V(d) and (e) of the petition.

(f) and (g). For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(f) and (g) of the petition.

(h), (i) and (j). Admits the allegations contained in paragraph V(h), (i) and (j) of the petition.

(k). Admits the allegations contained in the first sentence of paragraph V(k) of the petition. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining allegations contained in paragraph V(k) of the petition.

(l). Denies the allegations contained in paragraph V(l) of the petition.

(m) and (n). For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the

allegations contained in paragraph V(m) and (n) of the petition.

(o), (p) and (q). Denies the allegations contained in paragraph V(o), (p) and (q) of the petition.

(r). Admits that on or about November 28, 1942, petitioner and B. Royce purchased the partnership interests of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland. Denies the remaining allegations contained in paragraph V(r) of the petition.

(s). Denies the allegations contained in paragraph V(s) of the petition.

(t). For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V(t) of the petition.

(u). Denies the allegations contained in paragraph V(u) of the petition.

(v). Admits the allegations contained in the first two sentences of paragraph V(v) of the petition. Denies the remaining allegations contained in paragraph V(v) of the petition.

(w). Denies the allegations contained in paragraph V(w) of the petition. Alleges that the nature of the transaction, including the acquisition, payment and disposition of the remaining 350 shares of Oregon Motor Stages stock was as explained on pages 9 and 10 of Exhibit A attached to the petition on file in this proceeding.

(x). Denies the allegations contained in paragraph V(x) of the petition.

(y). Admits that Oregon Motor Stages paid interest to the American Business Credit Corporation and attorney's fees in the respective amounts of \$8,054.80 and \$2,135.41. Denies the remaining allegations contained in paragraph V(y) of the petition.

(z). Admits the allegations contained in paragraph V(z) of the petition.

(aa) and (bb). Denies the allegations contained in paragraph V(aa) and (bb) of the petition.

(cc). Admits that during the calendar year 1947 the city of Portland assessed a city 2% gross revenue tax on the partnership known as the Yellow Cab Company of Portland in the amount of \$9,899.71, and that said sum was claimed by the partnership as a deduction on its return for that year. Denies the remaining allegations contained in paragraph V(cc) of the petition.

(dd). Admits that respondent has disallowed \$7,500.00 of the expenses incurred by Yellow Cab Company of Portland, a partnership, in preparing cabs for sale, which amount was claimed by the partnership as a deduction for the calendar year 1947. Denies the remaining allegations contained in paragraph V(dd) of the petition.

(ee), (ff) and (gg). Denies the allegations contained in paragraph V(ee), (ff) and (gg) of the petition.

(hh) and (ii). For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies

the allegations contained in paragraph V(hh) and (ii) of the petition.

(jj). Denies the allegations contained in paragraph V(jj) of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

7. Further answering the petition, respondent alleges as follows:

(a). That during the taxable year 1947 petitioner was engaged in numerous business and other income producing activities in the city of Portland, Oregon, and other places; that the petitioner was engaged in the taxi cab business in Portland, Oregon; that this business was conducted and carried on as a partnership in 1947 under the name of Yellow Cab Company of Portland, and that petitioner was associated with his brother, B. Royce, in the operation thereof; that the petitioner was also a stockholder and officer of Oregon Motor Stages, Inc., a corporation engaged in the business of bus transportation in the state of Oregon; and that he further participated, as an individual proprietor, partner and/or joint venture in various other businesses including real estate, gold mining and the operation of a dance hall, all as more fully stated in the notice of deficiency from which the appeal is taken.

(b). That the petitioner and the various business ventures with which he was associated failed and/or refused to keep or maintain adequate books

of account or other accounting records in respect of the aforesaid business and/or income producing activities from which his gross income and net income for the taxable year involved in this proceeding might or could be determined.

(c). That the gross receipts of Yellow Cab Company of Portland, a partnership, and of the other business ventures in which petitioner had an interest, as aforesaid, were understated in substantial amounts and that during the taxable year the petitioner derived and/or received large amounts of income which were omitted from the income tax return as filed by him for said year.

8. That on March 15, 1948, petitioner filed a separate individual income tax return for the taxable year 1947, disclosing thereon a net income of \$68,218.74, although petitioner then and there knew that he had derived additional taxable income from Yellow Cab Company of Portland, a partnership, and the other business ventures with which petitioner was associated, as aforesaid, for said year in the amount of \$119,640.36, all of which was unreported income omitted from the return filed by him for the taxable year, and although petitioner then and there knew that his true net income for said year was not less than \$187,859.10, all as more fully stated on pages 17 to 21, inclusive, of the notice of deficiency from which this appeal is taken.

9. In further support and explanation of his allegations, as aforesaid, respondent alleges as follows:

(a). That the income derived and/or received

by petitioner during the taxable year in the amounts shown in paragraph 8, above, and the amount of income not reported by petitioner, was computed from information and data assembled from an examination of the books and records of petitioner and the business ventures with which he was associated, and from other sources.

(b). That for the taxable year 1947 petitioner failed to report income in the amount of \$4,059.92, as shown on page 20 of the notice of deficiency from which the appeal is taken, which amount of omitted income represented petitioner's distributive share of additional and unreported capital gains of the Yellow Cab Company of Portland, a partnership, as follows:

Reported	Corrected
\$6,388.73	\$10,448.65

That this unreported gain in the taxable year 1947 was attributable to petitioner's understatement of the sales of used taxi cabs and other assets reported by said partnership in the amount of \$15,000.00, determined as follows:

Sales price (reported in Schedule (c), Form 1065) .....	\$50,254.00
Add: Amount of understatement ...	15,000.00
<hr/>	<hr/>
Sales price, corrected .....	\$65,254.00
Cost basis, adjusted .....	23,459.38
<hr/>	<hr/>
Capital gain .....	\$41,794.62
Gain taken into account .....	20,897.31
<hr/>	<hr/>
Petitioner's share of gain: .....	\$10,448.65

(c). That among the items of income received by petitioner during the taxable year 1947, which were omitted from the return filed by him for said year, are the following amounts aggregating \$2,195.00, representing part of the proceeds from the sale of used taxi cabs belonging to Yellow Cab Company of Portland, a partnership, which amounts were diverted to the personal use of the petitioner, said sales further being identified as Plymouth cars 1941 and 1942 models sold in Portland, Oregon, in 1947 through the agency of one J. E. Hamilton, used car dealer, pursuant to arrangement made by petitioner:

Date of Sale	Cab No.	Sales Proceeds Remitted to Petitioner	Amount Reported by Yellow Cab	Amount Retained by Petitioner
6-28-47	77	\$ 795	\$ 700	\$ 95
7-14-47	16	800	695	105
7-14-47	67	800	700	100
7-29-47	37	800	600	200
8- 6-47	56	700	625	75
8-12-47	96	850	650	200
8-26-47	48	845	665	180
9-10-47	95	800	690	110
9-16-47	17	895	690	205
9-13-47	94	895	690	205
9-27-47	22	895	650	245
9-30-47	64	895	695	200
10-30-47	69	895	695	200
12- 4-47	50	775	700	75
<hr/>				
<hr/>		Totals.....	\$11,640	\$2,195
<hr/>				

(d). That among the items of income received by the petitioner during the taxable year 1947 which were omitted from the return filed by him

for said year, are the following amounts aggregating \$1,830, representing part of the proceeds from the sale of used taxi cabs belonging to Yellow Cab Company of Portland, a partnership, which amounts were appropriated by the petitioner to his own personal use:

Date of Sale	Cab No.	Sales Price Per Purchaser	Sales Proceeds Reported by Yellow Cab	Amount Retained by Petitioner
6-26-47	23	\$ 900	\$ 700	\$ 200
9- 4-47	34	900	625	275
8-23-47	54	700	625	75
8-22-47	61	725	650	75
8-22-47	75	725	650	75
8-29-47	59	850	665	185
8-29-47	73	850	665	185
8-29-47	76	850	690	160
8-22-47	62	750	650	100
8-22-47	86	750	650	100
7-31-47	18	800	700	100
7-31-47	42	800	700	100
7-31-47	83	800	700	100
7-31-47	85	800	700	100
<hr/>			<hr/>	<hr/>
Totals.....		\$11,200	\$9,370	\$1,830

10. That by reason of the premises, the return as filed by the petitioner for the taxable year 1947 is a false and fraudulent return filed with intent to evade tax, and for the purpose of defrauding and deceiving the respondent and the United States, and the deficiency in income tax involved in this proceeding for the taxable year is due in whole or in part to fraud with intent to evade tax.

Wherefore, it is prayed that the petitioner's appeal be denied, and further, that the Court redetermine and hold:

(1) That there is a deficiency in income tax for the taxable year 1947 in the amount as determined by the Commissioner for said taxable year and as shown by the notice of deficiency, as aforesaid;

(2) That the return as filed by the petitioner for the taxable year 1947 is a false and fraudulent return filed with intent to evade tax;

(3) That the deficiency in income tax for the taxable year 1947 is due in whole or in part to fraud with intent to evade tax; and

(4) That there is due and owing by the petitioner for said taxable year 1947 the penalties appropriate thereto, as determined by respondent and as shown by the notice of deficiency, as aforesaid.

/s/ DANIEL A. TAYLOR,  
Chief Counsel,  
Internal Revenue Service.

Of Counsel: Wilford H. Payne, Associate Appellate Counsel, John D. Picco, Special Attorney, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 23, 1954.

---

[Title of Tax Court and Docket No. 51527.]

#### REPLY

The Petitioner, by his attorney, R. T. Jacobs, for reply to the facts set forth in the Answer heretofore filed in this proceeding, admits and denies as follows:

7. (a) Admits that during the taxable year 1947,

petitioner was engaged in several business activities; that the Petitioner was engaged as a partner in the taxi-cab business in Portland, Oregon, under the name of Yellow Cab Company of Portland, and that Petitioner was associated with his brother, B. Royce, Isabelle Royce and Dora F. Royce in the operation thereof; that the petitioner was also a stockholder and officer of Oregon Motor Stages, Inc., a corporation engaged in the business of bus transportation in the state of Oregon; and that he further participated in various other business enterprises; denies each and all of the other allegations contained in paragraph 7 (a).

7. (b). Denies each and all of the allegations contained in paragraph 7 (b).

7. (c). Denies each and all of the allegations contained in paragraph 7 (c).

8. Admits that on or about March 15, 1948, petitioner filed an individual income tax return for the taxable year 1947 disclosing thereon a net income of \$68,218.74; denies each and all of the other allegations contained in paragraph 8; specifically denies that the petitioner derived additional taxable income in the year 1947 in the amount of \$119,640.36, or any other amount.

9. (a). Denies each and all of the allegations contained in paragraph 9 (a).

9. (b). Denies each and all of the allegations contained in paragraph 9 (b); specifically denies that petitioner had unreported income in the amount of \$4,059.92, or any other amount, from the sale of used taxi-cabs or from any other source.

9. (c). Denies each and all of the allegations contained in paragraph 9 (c); specifically denies that the petitioner had unreported income in the year 1947 in the amount of \$2,195.00, or any other amount, from the sale of used taxi-cabs or from any other source.

9. (d). Denies each and all of the allegations contained in paragraph 9 (d); specifically denies that the petitioner had unreported income in the year 1947 in the amount of \$1,830.00 or any other amount from the sale of used taxi-cabs, or from any other source.

10. Denies each and every allegation contained in paragraph 10.

Wherefore, it is prayed that the prayer for affirmative relief set forth in the Respondent's Answer be denied and the relief requested in the Petition be granted.

/s/ R. T. JACOB,  
Of Counsel:  
Jacob, Jones and Brown.

[Endorsed]: T.C.U.S. Filed May 21, 1954.

---

[Title of Tax Court and Docket No. 51528.]

## PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bureau Symbols ARC-Ap: SF Port

VEV:90D) dated the 28th day of September, 1953, and as a basis of his proceeding alleges as follows:

### I.

The petitioner is an individual residing in Vancouver, Washington. The returns for the period involved were filed with the Collector of Internal Revenue in Tacoma, Washington.

### II.

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on September 28, 1953.

### III.

The Commissioner determined a deficiency in income tax for the years and in the amounts as follows:

Year	Deficiency	Sec. 294(d)(2) Penalty
1945	\$20,399.28	\$2,005.84
1947	8,421.34	
Totals	\$28,820.62	\$2,005.84

of which the total amount is in controversy.

### IV.

The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

1. The respondent erred in including as petitioner's share of community income in 1945, the sum of \$21,875.00, or any other amount, as income to petitioner from the Oregon Motor Stages stock transaction.

2. The respondent erred in determining additional community income to petitioner in 1945 in the amount of \$519.05, or any other amount, as additional income from the Oregon Motor Stages stock transaction.

3. The respondent erred in increasing petitioner's community income in the year 1945 in the amount of \$2,951.55, in the year 1946 in the amount of \$2,201.76, and in the year 1947 in the amount of \$1,140.73, or any other amounts, from the sales of livestock made by petitioner in those years.

4. The respondent erred in reducing petitioner's capital loss carryover to the year 1945 by the amount of \$1,718.97, or any other amount.

5. The respondent erred in determining that the Yellow Cab Company of Portland, a partnership, had claimed excessive depreciation in the amount of \$10,213.38 for the year 1945, in the amount of \$3,034.93 for the year 1946 and in the amount of \$9,750.67 for the year 1947, or any other amounts.

6. The respondent erred in determining that payments made by the Yellow Cab Company of Portland, a partnership, to Charles W. Keffer and C. H. Luton in the amount of \$5,349.32 for the year 1945, in the amount of \$4,986.38 for the year 1946 and in the amount of \$2,908.60 for the year 1947, or any other amounts, are not deductible in computing said partnership income for said years.

7. The respondent erred in determining that petitioner received taxable income in the amount of \$932.06 in the year 1946 and in the amount of \$932.06 for the year 1947, or any other amounts, on

the purchase of a lease by petitioner from L. W. Hendrickson.

8. The respondent erred in determining that the sum of \$9,899.71, or any other amount, accrued as a city revenue tax in the year 1947 by the Yellow Cab Company of Portland, a partnership, was unallowable as a deduction.

9. The respondent erred in determining that the Yellow Cab Company of Portland, a partnership, expended the sum of \$7,500.00 in preparing used cabs for sale and in disallowing said amount or any part thereof as a deduction to the said partnership for the year 1947.

10. The respondent erred in determining that the Yellow Cab Company of Portland, a partnership, understated its reported sale of used taxi-cabs for the year 1947 in the amount of \$15,000.00, or any other amount.

11. The respondent erred in asserting a penalty in any amount under Sec. 294(d)(2), Internal Revenue Code, or any other section.

## V.

The facts upon which petitioner relies as a basis for this appeal are as follows:

(a) Petitioner is an individual residing in Vancouver, Washington, and was during all of the years involved herein, married to Isabelle H. Royce, and reported his income for Federal Income Tax purposes on the basis of cash receipts and disbursements and calendar year.

(b) During the year 1945, petitioner and a num-

ber of associates entered into negotiations with the then stockholders of Oregon Motor Stages for the acquisition of the outstanding stock of said corporation. There were outstanding at that time 750 shares of stock of said company and the price upon which negotiations were based was \$1,000.00 per share. Petitioner, Albert L. Schneider, E. Royce, F. C. Niederkrome and R. T. Jacob, began preparations for the acquisition of said stock, but Mr. L. R. Bentson of Vancouver, B. C., who is a relative of petitioner and E. Royce, informed the group that he desired to acquire a portion of the stock and agreed to and did purchase 350 shares of said stock.

(c) In the acquisition of his stock, Mr. Bentson advised the group that his funds were in Canada and were blocked, and it would be necessary for him to make arrangements to finance his purchase. Accordingly, a loan was negotiated on his behalf with the Portland Branch of the American Business Credit Corporation. In the transaction, petitioner loaned his stock as an accommodation to be pledged with Bentson's stock as security for said loan, but petitioner did not participate in the negotiation of said loan and had no obligation whatsoever for its repayment.

(d) After the conclusion of World War II in August, 1945, Mr. Bentson became apprehensive that the earnings of the corporation would be drastically curtailed and that the investment would not prove as profitable in the matter of liquidating his obligation as he had anticipated at the time of its

purchase. Mr. Bentson then made an offer to the corporation to surrender his 350 shares of stock upon the corporation paying the interest on his obligation and liquidating the loan from the said Portland Branch of the American Business Credit Corporation. Upon the surrender of his shares of stock, Oregon Motor Stages issued to Mr. Bentson a check for the sum of \$350,000.00, which said check the said Mr. Bentson delivered to the American Business Credit Corporation in payment of his said loan.

(e) The petitioner did not receive any part of said payment from Oregon Motor Stages, either directly, indirectly or constructively nor did he receive any benefit directly or indirectly from the payment of the said sum to the said Mr. Bentson. The value of petitioner's stock in said Oregon Motor Stages was not enhanced in value by the surrender of the stock of the said Bentson, but the value thereof was, in fact, depreciated by the surrender of said stock by the said Bentson and the distribution of the corporation's cash to him, and the company's operations were curtailed thereby.

(f) The cancellation or redemption or purchase by Oregon Motor Stages was of all the stock of a particular stockholder, Mr. Bentson, and he thereafter ceased to be interested in the affairs of the corporation and neither Mr. Bentson nor any other member of the said group retained any beneficial or other interest in said stock thereafter. Neither Mr. Bentson nor any other member of the said group realized any economic, taxable or other gain of any

character from the transaction. There was no pro-rata or any other type of distribution from the corporation to the stockholders.

(g) The facts as set forth in the immediately preceding paragraphs above apply with equal force and effect to the item of \$519.05, included by the respondent in petitioner's income for the year 1945 as an additional distribution from the Oregon Motor Stages stock transaction to the petitioner.

(h) During each of the years herein involved, the petitioner operated a farm in the State of Washington. The principal function of the farm operation was for the production of milk for bottle distribution and the operation of the farm also included the production of purebred Guernsey stock, which latter production was primarily for the purpose of producing milk cows to support the sale and distribution of milk.

(i) Before the preparation of his tax returns for each of the years in question, petitioner had his accountant prepare a list of the livestock sold during the year. This list indicated each individual animal sold, the date it was acquired and whether or not it was an animal intended for petitioner's herd or raised for sale in the ordinary course of business. All animals culled from the general herd as not being desirable animals to be included therein were treated as animals held for sale in the ordinary course of business and the profit realized therefrom was treated on all of petitioner's returns as ordinary income.

(j) The animals retained by petitioner as part

of his breeding herd constituted property used in the trade or business of the petitioner, and petitioner treated the gain or loss on the sale of any of these animals during the years herein involved, and where the animals had been held for more than 6 months as being capital gain or capital loss transactions. It was the practice of the petitioner to hold his animals for substantially their full period of usefulness prior to selling the same.

(k) The petitioner properly carried over a capital loss to the year 1945 in the amount of \$1,718.97.

(l) For the years 1945, 1946 and 1947 the respondent has determined that the Yellow Cab Company of Portland, a partnership, claimed excessive depreciation in the amounts of \$10,213.38, \$3,034.93 and \$9,750.67 respectively.

(m) The Yellow Cab Company of Portland has, for a number of years, followed the consistent practice of using a straight line method of depreciation and completely writing off all of its taxi-cabs over a four year period. The depreciation claimed by the Yellow Cab Company of Portland for said years constituted a reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence), under normal circumstances.

(n) On or about the 28th day of November, 1942, petitioner and E. Royce purchased the partnership interests of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland, a partnership, for a cash consideration. At the same time, the partnership entered into a profit sharing agreement with the said Charles Keffer and C. H. Luton

whereby each would be entitled to a certain percentage of the partnership profits thereafter as long as it was mutually agreeable that the said individuals continue in the employment of the partnership. Percentage of profit payments made under these agreements were properly deducted by the partnership in computing its net income for the years 1945, 1946 and 1947.

(o) On or about December 6, 1945, petitioner, B. Royce, in consideration of the payment by him of \$18,000.00, acquired an assignment of the balance due L. W. Hendrickson under his lease of property to Burnside Realty, Inc., and of the balance to be due under the option to purchase said property given to E. Royce. The assignment recited that 34 payments of \$553.03 per month were due from Burnside Realty, Inc., and the sum of \$6,555.65 "on the date said option is closed." Said option could not be closed until the year 1949, if at all.

(p) Petitioner received payments from Burnside Realty, Inc., under said assignment of \$6,636.36 in the year 1946 and the same amount in the year 1947. Petitioner did not report any gain on the transaction until he had recovered his investment of \$18,000.00, which did not occur until 1948. Petitioner could not determine until the year 1948 whether or not the rent payments would be fully made and the option would be exercised and thus whether any gain would be realized. The value of petitioner's contract rights depended on uncertain future payments.

(q) During the calendar year 1947, the City of

Portland assessed a city 2% gross revenue tax in the amount of \$9,899.71 against the Yellow Cab Company of Portland, a partnership. This said sum was accrued on the books of the Yellow Cab Company of Portland in the year 1947 and was claimed by said partnership as a deduction on its return for the said year, in accordance with the method of accounting regularly employed in keeping its books of account.

(r) The respondent has disallowed \$7,500.00 of the repair expenses claimed by the Yellow Cab Company of Portland, a partnership, as a deduction for the calendar year 1947, said disallowance being based upon the theory that the said company made capital expenditures of \$100.00 per cab sold in that year in preparing and painting each cab for sale.

(s) The Yellow Cab Company of Portland, a partnership, maintains its own garage and staff of mechanics and makes any and all repairs necessary to its cabs therein. The repair and painting expenses incurred by the said company represents repairs required in the ordinary course of business, and were charged to the account of repairs and maintenance in accordance with the method of accounting regularly employed and established many years before.

(t) All proceeds of sales of cabs made by the Yellow Cab Company of Portland, a partnership, during the calendar year 1947 are correctly recorded on the books of the said company and were properly reported on the tax return of the said company for the calendar year 1947.

(u) For the year 1945, petitioner reported on his estimated tax the full amount of tax estimated to be due and owing for said years and the penalty proposed for said years is without foundation.

Wherefore, petitioner prays that the Court hear this proceeding and determine that there is no deficiency in income taxes for any of the years 1945 and 1947 and that petitioner is not subject to any penalties determined by the respondent or any part thereof.

/s/ R. T. JACOB.

Of Counsel:

Jacob, Jones & Brown.

Duly Verified.

**EXHIBIT "A"**

Regional  
1112 Cascade Building  
Portland 4, Oregon

ARC-Ap:SF

Port:VEV:90D

Sep. 28, 1953

Mr. B. Royce  
306 West 21st Street  
Vancouver, Washington

Dear Mr. Royce:

You are advised that a determination of your income tax liabilities for the taxable years ended December 31, 1945, and 1947, discloses deficiencies in income tax in the total amount of \$28,820.62 and a penalty computed in accordance with the provisions of section 294(d) of the Internal Revenue Code for

the taxable year 1945 in the amount of \$2,005.84, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiencies. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,  
Commissioner,

/s/ By A. N. Williams,  
Associate Chief, Appellate Division.

Enclosures:

Statement  
Form 1276  
Agreement Form 870  
VEVelene 1pt

### STATEMENT

ARC-AP:SF  
Port:VEV:90D

B. Royce  
306 West 21st Street  
Vancouver, Washington

Income tax liability for the taxable years ended December 31, 1945, 1946 and 1947.

Section 294(d)(2)			
Year	Deficiency	Overassessment	Penalty
1945	\$20,399.28		\$2,005.84
1946		\$1,440.66	
1947	8,421.34		
Totals	\$28,820.62	\$1,440.66	\$2,005.84

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated February 20, 1951, and to your protest dated August 17, 1951.

The 6% penalty for substantial underestimate of estimated tax has been asserted for the taxable year ended December 31, 1945, in accordance with the provisions of section 294(d)(2) of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Robert T.

Jacob, 917 Public Service Building, Portland 4, Oregon, in accordance with the authority contained in the power of attorney executed by you.

The overassessment shown herein should not be regarded as finally determined. When final determination has been made, the overassessment, to the extent of the amount allowable, will be made the subject of a certificate of overassessment, which will reach you in due course through the office of the Director of Internal Revenue for your district, and will be applied by that official in accordance with section 322(a) of the Internal Revenue Code, provided that you have fully protected yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter, by filing with the Director of Internal Revenue for your district a timely claim for refund on Form 843.

**Taxable Year Ended December 31, 1945**  
**Adjustments to Net Income**

Net income as disclosed by return, Form 1040.....	\$115,515.61
Unallowable deductions and additional income:	
(a) Dividends (Oregon Motor Stages)..	\$21,875.00
(b) Additional distribution (Oregon Motor Stages) .....	519.05
(c) Farm loss .....	2,951.55
(d) Capital gains .....	232.24
	25,577.84
 <b>Total</b> .....	 <b>\$141,093.45</b>

Non-taxable income and additional deductions:	
(e) Partnership income .....	\$ 2,831.23
(f) Interest expense .....	467.46
 <b>Net income adjusted</b> .....	 <b>\$137,794.76</b>

### Explanation of Adjustments

(a) The records of this office show that prior to July 2, 1945, you, your brother E. Royce, Robert T. Jacob, Fred C. Niederkrome, and A. L. Schneider, negotiated for the purchase of the capital stock of Oregon Motor Stages, Portland, Oregon, an Oregon corporation engaged in the business of bus transportation. The outstanding stock of that corporation then consisted of 750 common shares, par value \$100.00 per share.

As a result of the negotiations referred to above, on or about July 2, 1945, you and your associates purchased shares of Oregon Motor Stages in the number and at the cost shown below:

	Shares	Cost
E. Royce .....	145	\$145,000.00
B. Royce .....	50	50,000.00
Robert T. Jacob.....	100	100,000.00
Fred C. Niederkrome.....	55	55,000.00
A. L. Schneider.....	50	50,000.00
 Total.....	 400	 \$400,000.00

In accordance with the plan adopted, the remaining 350 shares of Oregon Motor Stages stock were acquired in the name of your uncle, L. R. Bentson, 411 East 15th Street, North Vancouver, B. C., in consideration of payment of \$350,000.00 in cash. Such payment was made from the proceeds of a loan obtained by E. Royce acting for you and your above-named associates, through the Portland Branch of the American Business Credit Corporation, New York City, on a 90-day note which was signed by E. Royce and L. R. Bentson which was

collateralized by a deposit of the entire 750 shares of Oregon Motor Stages.

On or about September 6, 1945, pursuant to the plan adopted by you and your associates, as aforesaid, Oregon Motor Stages acquired the 350 shares of its own stock then standing in the name of L. R. Bentson and issued its check to him in the sum of \$350,000.00. This check was immediately endorsed and delivered to the American Business Credit Corporation in satisfaction of the 90-day note signed by E. Royce and L. R. Bentson.

It has been determined that it was not intended that L. R. Bentson should acquire, nor did he at any time acquire, any bona fide or actual beneficial interest in the stock of Oregon Motor Stages.

It has been further determined that the accumulated earnings and profits of Oregon Motor Stages available for distribution as dividends during the year 1945 were in excess of \$350,000.00.

This office holds that the transaction whereby Oregon Motor Stages acquired 350 shares of its capital stock, which were issued in the name of L. R. Bentson, for the sum of \$350,000.00 was consummated at such a time and in such a manner as to result in the realization of taxable income to the marital community in the amount of \$43,750.00, such sum being that portion of the total sum of \$350,000.00 which 50 shares of stock of Oregon Motor Stages owned by you bears to the total of 400 shares of such stock owned by you, E. Royce, Robert T. Jacob, Fred C. Niederkrome and A. L. Schneider. Your taxable income has therefore been

increased by \$21,875.00, such sum being your community share of the sum of \$43,750.00.

(b) It has been further determined that in connection with the transaction whereby Oregon Motor Stages acquired 350 shares of its stock in the manner stated above, that corporation paid interest to the American Business Credit Corporation and attorney fees in the respective total amounts of \$8,054.80 and \$2,135.41. With respect to these sums, this office holds that to the event of \$1,006.86 and \$31.25, respectively, the payment of interest and attorney fees was in satisfaction of your personal liability, incurred in connection with the transaction whereby you acquired the stock of the Oregon Motor Stages, and is income of the marital community. Your reported income has, therefore, been increased by \$519.05, being your community interest of the total of \$1,006.85 and \$31.25.

(c) In your income tax return filed for the calendar year 1945, you reported a net capital gain from the sale of livestock purchased and raised in the amount of \$5,910.59, of which \$2,955.30 was taken into account under the provisions of Section 117(b) of the Internal Revenue Code. One-half of such recognized gains or \$1,477.65 was reported in your return as income taxable to you and the balance of \$1,477.65 was reported as income in a separate return filed by your wife, Isabelle H. Royce, under Washington Community Property Law provisions. It has been determined that of such reported capital gains in the amount of \$5,910.59, the sum of \$5,903.10 was from sales of livestock held

for sale to customers in the ordinary course of your business and is therefore taxable as ordinary income rather than as a capital gain. Your reported ordinary community income has accordingly been increased by one-half the amount of \$5,903.10, or \$2,951.55.

(d) In your return filed for the calender year 1945, you reported a net capital gain from sales or exchanges of capital assets in the amount of \$1,574.54. It has been determined that you realized a net gain from such sales or exchanges in the amount of \$1,806.78, and your net income has accordingly been increased by the amount of \$232.24, computed as follows:

Net capital gain reported.....	\$1,574.54
Additional income from capital gains:	
(1) Capital loss carry-over.....	\$1,718.97
(2) Partnership capital gains.....	( 10.96)
(3) Livestock sales .....	(1,475.77)
 Total increase .....	 \$ 232.24
 Net capital gain as corrected.....	 \$1,806.78

(1) In your return for the calender year 1945, you claimed a capital loss carryover in the amount of \$1,718.97. It has been determined that you have no allowable capital loss carryover to the year 1945 and your net capital gains have been increased accordingly.

(2) It has been determined that your community shares of capital gains from the partnership Yellow Cab Co., Portland, Oregon, is in the amount of \$141.25 rather than \$152.21 as reported in your

1945 return and your reported capital gains have accordingly been decreased by the amount of \$10.96.

(3) In your return for the calendar year 1945, you reported a net long-term capital gain from the sale or exchange of livestock purchased or raised in the amount of \$2,955.30, of which one-half or \$1,477.65 was included as taxable income to you under the State of Washington Community Property Law provisions. It has been determined that the correct amount of gains from the sale of livestock was in the amount of \$7.49, of which 50% or \$3.75 is recognized and that your community share thereof is in the amount of \$1.88. Your reported capital gains have therefore been decreased in the amount of \$1,475.77. (See Item (c) above.)

(e) In your return filed for the calendar year 1945, you reported the sum of \$129,073.54 as being your distributive share of the net incomes from partnerships. It has been determined that your distributive share of net incomes from partnerships is in the amount of \$126,242.31 and your net income has accordingly been decreased by the amount of \$2,831.23, computed as follows:

(1) Yellow Cab Company, Portland, Oregon.....	\$1,177.62
(2) Royce Brothers .....	1,653.61
Total .....	\$2,831.23

(1) In your return filed for the calendar year 1945, you reported the sum of \$70,381.28 as your distributive share of the ordinary partnership income reported in the return filed by the Yellow Cab Company, Portland, Oregon, for the calendar

year 1945. It has been determined that your correct distributive share of such partnership income is \$138,407.32, computed as follows:

Ordinary income reported in partnership return.....	\$261,251.95
Unallowable deductions and additional income:	
(A) Depreciation .....	10,213.38
(B) Cost of partnership interest.....	5,349.32
Ordinary net income adjusted.....	\$276,814.65
Your distributive share.....	\$138,407.32

(A) It has been determined that the depreciation allowable as a deduction is in the amount of \$1,764.80 rather than \$11,978.18 as claimed and the net income of the partnership has been increased accordingly in the amount of \$10,213.38.

(B) The record shows that prior to August 1, 1942, Charles W. Keffer and C. H. Luton were the owners of .659% and .906% interest, respectively, in the partnership Yellow Cab Company of Portland. On or about that date, August 1, 1942, you and your brother, E. Royce, purchased the interests of these individuals under an agreement whereby *inter alia*, each of the vendors was to receive 1% of the partnership net profits for a period of five years.

During the year under review, payments to them were charged to partnership operation as compensation. This office holds that payments in 1945 totaling \$5,349.32 made by the partnership under the contract and in the manner referred to in the preceding paragraph were capital in nature and not deductible in computing partnership income.

Your distributive share of the partnership income of Yellow Cab Co., Portland, Oregon, has been determined to be income of the marital community. Your reported net income from such partnership has accordingly been decreased by the amount of \$1,177.62 computed as follows:

Your distributive share as shown above.....	\$138,407.32
Community share, one-half.....	69,203.66
Reported .....	70,381.28
Decrease .....	<hr/> \$ 1,177.62

(2) In your return for the calendar year 1945, you reported income from the partnership Royce Brothers in the amount of \$3,307.23. It has been determined that such income is income of the marital community and that only one-half thereof is taxable to you. Your reported net income from this source has accordingly been decreased by the amount of \$1,653.61.

(f) It has been determined that of the amount of \$1,006.85 held under item (b) above to be taxable income of the marital community, the sum of \$467.46 is allowable as a deduction for interest paid in computing your income for the year 1945.

#### Computation of Income Tax

Net income adjusted.....	\$137,794.76
Less: Excess of net long-term capital gain over net short-term capital loss.....	1,806.78
Ordinary net income.....	<hr/> \$135,987.98
Less: Normal tax exemption.....	500.00
Balance subject to normal tax.....	<hr/> \$135,487.98

## Computation of Income Tax—(Continued)

Normal tax 3% of \$135,487.98 .....	4,064.64
Ordinary net income.....	\$135,987.98
Less: Surtax exemptions.....	500.00
Balance subject to surtax.....	\$135,487.98
Surtax .....	\$ 98,904.30
Partial tax .....	\$102,968.94
Plus: 50% of \$1,806.78.....	903.39
Income tax liability.....	\$103,872.33
Income tax liability disclosed by return, Account No. 3015686 - Washington.....	83,473.05
Deficiency in income tax.....	\$ 20,399.28
Penalty, Sec. 294(d)(2), Internal Revenue Code	
Income tax liability as adjusted.....	\$103,872.33
Less: Withholding tax.....	None
Paid on Estimated Declaration.....	\$70,441.60      70,441.60
Difference .....	\$ 33,430.73
Penalty (6% of \$33,430.73).....	\$ 2,005.84

## Taxable Year Ended December 31, 1946

## Adjustments to Net Income

Net income as disclosed by return, Form 1040 .....	\$110,026.70
Unallowable deductions and additional income:	
(a) Net gain from sale or exchange of property other than capital assets \$	26.22
	932.06      958.28
Total .....	\$110,984.98

## Non-taxable income and additional deductions:

(c) Partnership income .....	\$2,261.88
(d) Capital gains .....	676.95      2,938.83
Net income adjusted .....	\$108,046.15

## Explanation of Adjustments

- (a) It has been determined that of the long-

term capital gains or losses reported in your return, the net amount of \$26.22 constitutes ordinary income from the sale of other than capital assets and your net income has been increased accordingly by the sum of \$26.22, computed as follows:

(1) Gains from sale of livestock.....	\$2,201.76
(2) Losses from sale of livestock.....	(1,961.56)
(3) Yellow Cab Company of Seattle.....	( 213.98)
	<hr/>
	\$ 26.22

(1) In your return filed for the calendar year 1946, you reported long-term capital gains of the marital community from the sale of livestock raised and purchased in the total amount of \$5,111.53, of which one-half was taxable to you as community income. It has been determined that of such sales, the sum of \$4,403.53 were sales of livestock held for sale in the ordinary course of business. Your gains from the sale of livestock, reported as sales of property other than capital assets, has accordingly been increased by one-half of \$4,403.53, or \$2,201.76.

(2) In your return filed for the calendar year 1946, you reported long-term capital losses of the marital community, from the sale of livestock purchased in the total amount of \$3,923.12 of which one-half was your community share. It has been determined that the loss of \$3,923.12 was from the sale of livestock held for sale to customers in the ordinary course of business. Your gains from the sale of livestock, reported as sales of property other than capital assets, has accordingly been decreased by one-half of \$3,923.12, or \$1,961.56.

(3) In your return you reported the sum of \$213.98 as your community portion of the net short-term capital loss of the partnership Yellow Cab Company of Seattle. It has been determined that such reported loss was from the sale of property other than capital assets and your reported income from the sale of other than capital assets has accordingly been decreased by the amount of \$213.98.

(b) It has been determined that during the year 1946, the marital community received payments totaling \$6,636.36 upon a contract purchased by you from L. W. Hendrickson and that your community share of the profits from such payments is in the amount of \$932.06 computed as follows:

Total proceeds .....	\$25,031.14	100.0000%
Cost .....		71,9104%
Profit .....		28.0896%
Payments received in 1946.....		\$6,636.36
Profit realized in 1946—\$6,636.36x28.0896%		1,864.13
50% Community .....		932.07
Taxable to you.....		932.06

(c) It has been determined that the marital community received partnership income for the calendar year 1946 in the amount of \$253,002.14 and that your community share is \$126,501.07 rather than \$128,762.95 as reported. Your reported partnership income has accordingly been decreased by the amount of \$2,261.88, computed as follows:

	Corrected Income
Royce Brothers .....	\$ 5,989.42
Queen City Garage.....	3,014.96
The Gray Line Tours.....	12,598.66
Cloverhill Guernsey Farm.....	(8,817.50)

	Corrected Income
Necanicum Fur Farm.....	(2,082.98)
Yellow Cab Company of Seattle.....	116,565.17
Yellow Cab Company of Portland.....	125,734.41
Total partnership income as corrected .....	\$253,002.14
Community share, one-half.....	126,501.07
Reported .....	128,762.95
Decrease .....	2,261.88

In the partnership return filed by the Yellow Cab Company of Portland for the calendar year 1946, the distributive share of the ordinary net income of the marital community was shown as being in the amount of \$121,723.76. It has now been determined that the distributive share of the marital community from such partnership is in the amount of \$125,734.41 computed as follows:

Ordinary net income as disclosed by return.....	\$243,447.51
Unallowable deductions and additional income:	
(A) Depreciation .....	\$3,034.93
(B) Cost of partnership interest.....	4,986.38      8,021.31
Ordinary net income adjusted.....	\$251,468.82
Your distributive share.....	125,734.41

(A) It has been determined that the depreciation allowable on taxicabs is in the amount of \$2,102.68 rather than \$5,137.61 as claimed and the ordinary net income of the partnership has been increased accordingly in the amount of \$3,034.93.

(B) On the basis of the facts and for the reasons stated heretofore, it has been determined that the sum of \$4,986.38, charged to the partnership operations for the year 1946 as compensation to Charles W. Keffer and C. H. Luton was capital in

nature and not deductible in computing partnership income.

(d) In your return filed for the calendar year 1946, you reported the sum of \$3,835.84 as being your community share of capital gains. It has been determined that your correct share of the capital gains of the marital community is in the amount of \$3,158.89 and your net income has therefore been decreased by the amount of \$679.95, consisting of the following adjustments:

(1) Capital gains from sale of livestock.....	\$1,100.89
(2) Capital loss from sale of livestock.....	980.78
(3) Yellow Cab Company of Portland.....	( 11.16)
(4) Yellow Cab Company of Seattle.....	( 445.68)
(5) Mathematical error .....	( 100.00)
<hr/>	
Decrease .....	\$(- 676.95)

(1) It has been determined that of the long-term capital gains from the sale of livestock reported in your return filed for the calendar year 1946, the amount of \$2,201.77 was from the sale of livestock held for sale to customers in the ordinary course of your business and is, therefore, ordinary income. Your reported capital gains are therefore decreased by the amount of 50% of such gains, or \$1,100.89.

(2) It has been determined that of the long-term capital losses from the sale of livestock reported in your return filed for the calendar year 1946, the amount of \$1,961.56 was from the sale of livestock held for sale to customers in the ordinary course of your business and is, therefore, an ordinary loss. Your reported capital gains are therefore increased by the amount of 50% of such losses, or \$980.78.

(3) It has been determined that your community share of the long-term capital gains reported in the partnership return of Yellow Cab Company of Portland is in the amount of \$143.75, rather than \$154.91 as reported in your return filed for the calender year 1946. Your reported capital gains are therefore decreased by the amount of \$11.16.

(4) In your return filed for the calendar year 1946, you reported as your community share of the capital gains of the partnership Yellow Cab Company of Seattle, a net long-term capital gain of \$251.75 and a net short-term capital loss of \$213.98. It has been determined that the partnership realized a net long-term capital loss of \$3,199.25, of which your distributive community share is \$407.91. It has been further determined that the partnership realized no short-term capital gains or losses. Net capital gains have accordingly been decreased by the amount of \$445.68.

(5) In your returns filed for the calendar year 1946, you erroneously reported 50% of long-term capital losses in the amount of \$2,468.97 as being \$1,134.48 rather than \$1,234.48. Your reported capital gains are accordingly decreased by the amount of \$100.00.

Computation of Income Tax

Net income adjusted.....	\$108,046.15
Less: Excess of net long-term capital gain over net short-term capital loss.....	3,158.89
Ordinary net income.....	\$104,887.26
Less: Exemptions .....	500.00
Balance subject to tentative tax.....	\$104,387.26

## Computation of Income Tax—(Continued)

Tentative tax .....	71,224.66
Less: 5% of tentative tax.....	3,561.23
	_____
Partial tax .....	\$ 67,663.43
Plus: 50% of \$3,158.90.....	1,579.45
	_____
Income tax liability.....	\$ 69,242.88
Income tax liability as disclosed by return, Account No. 3022247 - Washington.....	70,683.54
	_____
Overassessment in income tax.....	\$ 1,440.66
	_____

## Taxable Year Ended December 31, 1947

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$76,468.68
Unallowable deductions and additional income:	
(a) Net gain from sale or exchange of property other than capital assets	\$ 1,140.73
(b) Partnership income .....	11,197.22
(c) Other income .....	932.06 \$13,270.01
	_____
Total .....	\$89,738.69
Non-taxable income and additional deductions:	
(d) Capital gains .....	3,169.45
	_____
Net income adjusted.....	\$86,569.24

## Explanation of Adjustments

(a) In your income tax return filed for the calendar year 1947 you reported a net capital gain of \$2,281.47 from the sales of livestock purchased and raised of which \$1,140.73 was taken into account under the provisions of Section 117(b) of the Internal Revenue Code. One-half of such recognized gains or \$570.36 was reported in your return as income taxable to you and the balance of \$570.37 was reported as income in a separate return filed by your wife Isabelle H. Royce under Washington Community Property Law provisions. It has been

determined that such reported gain was from sales of livestock held for sale to customers in the ordinary course of your business and is therefore taxable as ordinary income rather than as a capital gain as reported. Your reported ordinary community income has accordingly been increased by \$1,140.73.

(b) In your return for the calendar year 1947, you reported the sum of \$81,286.83 as your distributive share of income of certain partnerships in which you were interested. The following tabulation shows the names and addresses of such partnerships, your distributive share of incomes reported as compared with the incomes as determined by this office and the total increase as determined.

Name of Partnership	Income Reported	Income As Corrected
Yellow Cab Company, Portland, Ore...	\$ 47,648.53	\$ 62,678.02
Necanicum Fur Farm, Seaside, Ore.....	(1,144.93)	(1,144.93)
Deluxe Attractions, Portland, Ore.....	(2,592.94)	(2,592.94)
Cloverhill Guernsey Farm, Medford, Ore. ....	( 112.43)	None
Royce Bros., Portland, Ore.....	4,502.06	4,154.20
Queen City Garage, Seattle, Wash.....	2,934.54	3,043.24
Gray Line Tours, Seattle, Wash.....	29,039.64	29,039.64
Yellow Cab Company, Seattle, Wash....	82,932.39	89,790.87
Cloverhill Guernsey Farms, Medford, Ore. ....	( 633.20)	None
 Totals .....	\$162,573.66	\$184,968.10
Community share—one-half .....	\$ 81,286.83	\$ 92,484.05
Income reported .....		81,286.83
 Increase .....		\$ 11,197.22

The adjustments of your income attributable to the revision of partnership income of the Yellow

Cab Company of Portland are shown below:

Ordinary net income reported in partnership return.... \$ 95,297.06

Unallowable deductions and additional income:

(1) Depreciation .....	\$9,750.67
(2) Cost of partnership interest.....	2,908.60
(3) Taxes and licenses.....	9,899.71
(4) Repairs .....	7,500.00
	_____
Ordinary net income adjusted.....	\$125,356.04

Your distributive share of the above-adjusted income.. \$ 62,678.02

(1) It has been determined that the depreciation allowable on taxicabs is in the amount of \$20,615.82 rather than \$30,366.49 as claimed and the net income of the partnership has been increased accordingly in the amount of \$9,750.67.

(2) On the basis of the facts and for the reasons stated heretofore, it has been determined that the sum of \$2,908.60 charged to the partnership operation for the year 1947 as compensation to Charles W. Keffer and C. H. Luton was capital in nature and not deductible in computing partnership income.

(3) It has been determined that the accrued City 2% Gross Revenue Tax in the amount of \$9,-899.71 claimed as a deduction in the return filed for the calendar year 1947 was being contested by the partnership, and that the deduction is therefore unallowable.

(4) It has been determined that of the deduction claimed for repairs in the partnership return filed for the calendar year 1947, the amount of \$7,-500.00 was incurred in preparing used cabs for sale. Such expenditures are therefore capital in nature and not deductible as an ordinary and necessary business expense.

(c) It has been determined that during the year 1947, you received payments totaling \$6,636.36 on a contract purchased from L. W. Hendrickson, and that your community share of the profits from such payments was in the amount of \$932.06 computed as follows:

Total Proceeds .....	\$25,031.14	100.0000%
Cost ....	18,000.00	71.9104%
Profit .....	\$ 7,031.14	28.0896%
Payments received in 1947.....		\$6,636.36
Profit realized in 1947, \$6,636.36x28.0896%		1,864.13
50% Community .....		932.07
Taxable to you .....		932.06

(d) In your return filed for the calendar year 1947, you reported a net gain from sales or exchanges of capital assets in the amount of \$13,168.55. It has been determined that you realized a net gain from such sales or exchanges in the amount of \$9,999.10 and your net income has accordingly been decreased by the amount of \$3,169.45, computed as follows:

	Reported	Adjusted
Livestock sales .....	\$ 570.36	None
Farm machinery .....	57.26	\$ 57.26
Miscellaneous sales .....	( 72.59)	( 72.59)
Cloverhill Guernsey Dairy.....	( 397.98)	None
Yellow Cab Company of Portland.....	5,928.66	5,224.33
Yellow Cab Company of Seattle.....	6,264.68	3,971.94
Gray Line Tours .....	347.89	347.89
Cloverhill Guernsey Farm.....	509.85	509.85
Necanicum Fur Farm.....	( 39.58)	( 39.58)
Totals .....	\$13,168.55	\$ 9,999.10
Capital gains reported.....		\$13,168.55
Decrease .....		\$ 3,169.45

It has been determined that the Yellow Cab Company of Portland understated its reported sales of used taxicabs for the year 1947 in the amount of \$15,000.00. The reported income of the partnership has accordingly been increased by \$15,000.00 and is reflected in the amount of \$5,224.33 shown above as your corrected distributive share of capital gains from such partnership.

#### Computation of Income Tax

Net income adjusted.....	\$86,569.24
Less: Excess of net long-term capital gain over net short-term capital loss.....	9,999.10
<hr/>	
Ordinary net income.....	\$76,570.14
Less: Exemptions .....	500.00
<hr/>	
Balance subject to tentative tax.....	\$76,070.14
Tentative tax .....	47,036.81
Less: 5% of tentative tax.....	2,351.84
<hr/>	
Partial tax .....	\$44,684.97
Plus: 50% of \$9,999.10.....	4,999.55
<hr/>	
Income tax liability.....	\$49,684.52
Income tax liability as disclosed by return, Account No. 6300017 - Washington.....	41,263.18
<hr/>	
Deficiency in income tax.....	\$ 8,421.34
<hr/>	

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

[Title of Tax Court and Docket No. 51528.]

## ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph I of the petition.
2. Admits the allegations contained in paragraph II of the petition.
3. Admits the allegations contained in paragraph III of the petition.
4. Denies that he erred in his determination of the deficiencies in income tax and penalty as shown by the notice of deficiency from which the appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.
5. (a) Admits the allegations contained in paragraph V(a) of the petition.  
(b) Admits the allegations contained in the first two sentences of paragraph V(b) of the petition. Denies the remaining allegations contained in paragraph V(b) of the petition.  
(c) Denies the allegations contained in paragraph V(c) of the petition. Alleges that the nature of the stock transaction including the acquisition, payment and disposition of the remaining 350 shares of Oregon Motor Stages stock was as ex-

plained on pages 2 and 3 of Exhibit A attached to the petition on file in this proceeding.

(d), (e), (f) and (g) Denies the allegations contained in paragraph V(d), (e), (f) and (g) of the petition.

(h) Admits the allegations contained in the first sentence of paragraph V(h) of the petition. Denies the remaining allegations contained in paragraph V(h) of the petition.

(i), (j) and (k) Denies the allegations contained in paragraph V(i), (j) and (k) of the petition.

(l) Admits the allegations contained in paragraph V(l) of the petition.

(m) Denies the allegations contained in paragraph V(m) of the petition.

(n) Admits that on or about November 28, 1942 the petitioner and E. Royce purchased the partnership interest of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland, a partnership. Denies the remaining allegations contained in paragraph V(n) of the petition.

(o) Admits the allegations contained in the first sentence of paragraph V(o) of the petition. Denies the remaining allegations contained in paragraph V(o) of the petition.

(p) Admits the allegations contained in the first two sentences of paragraph V(p) of the petition. Denies the remaining allegations contained in paragraph V(p) of the petition.

(q) Admits the allegations contained in the first sentence of paragraph V(q) of the petition. Admits that the amount of \$9,899.71 was claimed by the partnership as a deduction on its return for the year 1947. Denies the remaining allegations contained in paragraph V(q) of the petition.

(r) Admits that the respondent has disallowed \$7,500.00 of the expenses incurred in preparing cabs for sale, which amount was claimed by the Yellow Cab Company of Portland, a partnership, as a deduction for the calendar year 1947. Denies the remaining allegations contained in paragraph V(r) of the petition.

(s), (t) and (u) Denies the allegations contained in paragraph V(s), (t) and (u) of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of the deficiencies and penalty be approved.

/s/ DANIEL A. TAYLOR,

Chief Counsel,

Internal Revenue Service.

Of Counsel: Wilford H. Payne, Associate Appellate Counsel, John D. Picco, Special Attorney, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 23, 1954.

[Title of Tax Court and Docket No. 51529.]

**PETITION**

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bureau Symbols ARC-Ap:SF Port:VEV:90D), dated the 28th day of September, 1953, and as a basis of his proceeding alleges as follows:

**I.**

The petitioner, B. Royce, is an individual residing in Vancouver, Washington. He is the surviving husband of and the duly qualified and acting Executor of the Estate of Isabelle H. Royce, deceased. The returns for the said Isabelle H. Royce for the period involved were filed with the Collector of Internal Revenue in Tacoma, Washington.

**II.**

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on September 28, 1953.

**III.**

The Commissioner determined a deficiency in income tax for the years and in the amounts as follows:

Year	Deficiency	Sec. 294(d)(2)	Penalty
1945	\$31,913.80		\$2,588.89
1946	11,435.22		—
1947	8,421.36		—
Totals	\$51,770.38		\$2,588.89

of which the total amount is in controversy.

#### IV.

The determination of tax set forth in the said notice of deficiency is based upon the following errors:

1. The respondent erred in including as petitioner's share of community income in 1945 the sum of \$21,875.00, or any other amount, as income to petitioner from the Oregon Motor Stages stock transaction.
2. The respondent erred in determining additional community income to petitioner in 1945 in the amount of \$519.05, or any other amount, as additional income from the Oregon Motor Stages stock transaction.
3. The respondent erred in increasing petitioner's community income in the year 1945 in the amount of \$2,951.55, in the year 1946 in the amount of \$2,201.76, and in the year 1947 in the amount of \$1,140.73, or any other amounts, from the sales of livestock made in those years.
4. The respondent erred in increasing the petitioner's partnership income in the year 1945 in the amount of \$10,612.61, or any other amount.
5. The respondent erred in increasing the decedent's community share of capital gains from the partnership Yellow Cab Company of Portland, in the amount of \$10.96, or any other amount, for the year 1945.
6. The respondent erred in increasing the petitioner's community share of partnership income in

the year 1946 by the amount of \$13,173.30 and in the year 1947 by the amount of \$11,197.22, or any other amounts.

(a) The respondent erred in determining that the Yellow Cab Company of Portland, a partnership, had claimed excessive depreciation in the amount of \$3,034.93 for the year 1946, and in the amount of \$9,750.67 for the year 1947, or any other amounts.

(b) The respondent erred in determining that payments made by the Yellow Cab Company of Portland, a partnership, to Charles W. Keffer and C. H. Luton in the amount of \$4,986.38 for the year 1946, and in the amount of \$2,908.60 for the year 1947, or any other amounts, are not deductible in computing said partnership income for said years.

7. The respondent erred in determining that petitioner received taxable income in the amount of \$932.06 in the year 1946, and in the amount of \$932.06 for the year 1947, or any other amounts, on the purchase of a lease by petitioner from L. W. Hendrickson.

8. The respondent erred in increasing the petitioner's community share of long-term capital gains from the Yellow Cab Company of Portland by the amount of \$11.16, or any other amount, for the year 1946.

9. The respondent erred in determining that the sum of \$9,899.71, or any other amount, accrued as a city revenue tax in the year 1947 by the Yellow

Cab Company of Portland, a partnership, was unallowable as a deduction.

10. The respondent erred in determining that the Yellow Cab Company of Portland, a partnership, expended the sum of \$7500.00 in preparing used cabs for sale, and in disallowing said amount, or any part thereof, as a deduction to the said partnership for the year 1947.

11. The respondent erred in asserting a penalty in any amount under Section 294(d)(2), Internal Revenue Code, or any other section.

## V.

The facts upon which petitioner relies as a basis for this appeal are as follows:

(a) During all of the years involved herein, petitioner, Isabelle H. Royce, was married to B. Royce, and they resided in Vancouver, Washington, and she reported her income for Federal income tax purposes on the basis of a calendar year and cash receipts and disbursements.

(b) During the year 1945 the said B. Royce and a number of associates entered in the negotiations with the then stockholders of Oregon Motor Stages for the acquisition of the outstanding stock of said corporation. There were outstanding at that time 750 shares of stock of said company and the price upon which the negotiations were based was \$1,000.00 per share. The said B. Royce, Albert L. Schneider, E. Royce, F. C. Niederkrome and R. T. Jacob began preparations for the acquisition of said stock, but Mr. L. R. Bentson of Vancouver,

B. C., who is a relative of the said B. Royce, and E. Royce, informed the group that he desired to acquire a portion of the stock and agreed to and did purchase 350 shares of said stock.

(c) In the acquisition of his stock Mr. Bentson advised the group that his funds were in Canada and were blocked, and that it would be necessary for him to make arrangements to finance his purchase. Accordingly, a loan was negotiated on his behalf with the Portland Branch of the American Business Credit Corporation. In the transaction, petitioner B. Royce loaned his stock as an accommodation to be pledged with Mr. Bentson's stock as security for said loan, but B. Royce did not participate in the negotiation of said loan and had no obligation whatsoever for its repayment.

(d) After the conclusion of World War II in August, 1945, Mr. Bentson became apprehensive that the earnings of the corporation would be drastically curtailed and that the investment would not prove as profitable in the matter of liquidating his obligation as he had anticipated at the time of its purchase. Mr. Bentson then made an offer to the corporation to surrender his 350 shares of stock upon the corporation paying the interest on his obligation and liquidating the loan from the said Portland Branch of the American Business Credit Corporation. Upon the surrender of his shares of stock, Oregon Motor Stages issued to Mr. Bentson a check for the sum of \$350,000.00, which said check the said Mr. Bentson delivered to the American Business Credit Corporation in payment of his said loan.

(e) The said B. Royce did not receive any part of said payment from Oregon Motor Stages, either directly, indirectly or constructively, nor did he receive any benefit directly or indirectly from the payment of the said sum to the said Mr. Bentson. The value of B. Royce's stock in said Oregon Motor Stages was not enhanced in value by the surrender of the stock of the said Mr. Bentson, but the value thereof was, in fact, depreciated by the surrender of said stock by the said Bentson and the distribution of the corporation's cash to him, and the company's operations were curtailed thereby thereafter.

(f) The cancellation or redemption or purchase by Oregon Motor Stages was of all the stock of a particular stockholder, Mr. Bentson, and he thereafter ceased to be interested in the affairs of the corporation and neither Mr. Bentson or any other member of the said group retained any beneficial or other interest in said stock thereafter. Neither Mr. Bentson nor any other member of the said group realized any economic, taxable or other gain of any character from the transaction. There was no prorata or any other type of distribution from the corporation to the stockholders.

(g) The facts as set forth in the immediately preceding paragraphs above apply with equal force and effect to the item of \$519.05, included by the respondent in petitioner's income for the year 1945 as an additional distribution from the Oregon Motor Stages stock transaction to the petitioner.

(h) During each of the years herein involved,

the petitioner and her said husband, B. Royce, operated a farm in the State of Washington. The principal function of the farm operation was for the production of milk for bottle distribution and the operation of the farm also included the production of purebred Guernsey stock, which latter production was primarily for the purpose of producing milk cows to support the sale and distribution of milk.

(i) Before the preparation of their tax returns for each of the years in question, petitioner and her husband, B. Royce, had their accountant prepare a list of the livestock sold during the year. This list indicated each individual animal sold, the date it was acquired and whether or not it was an animal intended for petitioner's herd or raised for sale in the ordinary course of business. All animals culled from the general herd as not being desirable animals to be included therein were treated as animals held for sale in the ordinary course of business and the profit realized therefrom was treated on all of petitioner's returns as ordinary income.

(j) The animals retained by petitioners as part of their breeding herd constituted property used in the trade of business of the petitioners, and the petitioners treated the gain or loss on the sale of any of these animals during the years herein involved, and where the animals had been held for more than six months, as being capital gain or capital loss transactions. It was the practice of the petitioner and her husband to hold the animals for substantially their full period of usefulness prior to selling the same.

(k) The respondent has not set forth the facts which form the basis for the purported increase in partnership income in the amount of \$10,612.61 made by him in petitioner's income for the calendar year 1945. Petitioner therefore alleges on information and belief that the return as filed by her with regard to the partnership income reported by her was correct in every respect.

(l) For the years 1946 and 1947, the respondent has determined that the Yellow Cab Company of Portland, a partnership, claimed excessive depreciation in the amounts of \$3,034.93 and \$9,750.67, respectively.

(m) The Yellow Cab Company of Portland, a partnership, has for a number of years, followed the consistent practice of using a straight line method of depreciation and completely writing off all of its taxicabs over a four year period. The depreciation claimed by the said Yellow Cab Company of Portland for said years constituted a reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence), under normal circumstances.

(n) On or about the 28th day of November, 1942, petitioner's husband, B. Royee, and E. Royee purchased the partnership interest of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland, a partnership, for a cash consideration. At the same time the partnership entered into a profit-sharing agreement with the said Charles Keffer and C. H. Luton, whereby each would be

entitled to a certain percentage of the partnership profits thereafter as long as it was mutually agreeable that the said individuals continue in the employment of the partnership. The percentage of profit payments made under these agreements were properly deducted by the partnership in computing its net income for the years herein involved.

(o) On or about December 6, 1945, petitioner's husband, B. Royce, in consideration of the payment by him of \$18,000.00, acquired an assignment of the balance due L. W. Hendrickson under his lease of property to Burnside Realty, Inc., and of the balance to be due under the option to purchase said property given to E. Royce. The assignment recited that thirty-four payments of \$553.03 per month were then due from Burnside Realty, Inc., and the sum of \$6,555.65 "on the date said option is closed." Said option could not be closed until the year 1949, if at all.

(p) The said B. Royce received payment from Burnside Realty, Inc. under said assignment of \$6,636.36 in the year 1946 and the same amount in the year 1947. Neither petitioner nor her husband, B. Royce, reported any gain on the transaction until B. Royce had recovered his investment of \$18,000.00, which did not occur until 1948. Petitioner and B. Royce could not determine until the year 1948 whether or not the rent payments would be fully made and the option would be exercised and thus whether any gain would be realized. The value of B. Royce's contract rights depended on uncertain future payments.

(q) During the calendar year 1947, the City of Portland assessed a city 2% gross revenue tax in the amount of \$9,899.71 against the Yellow Cab Company of Portland, a partnership. This said sum was accrued on the books of the Yellow Cab Company of Portland in the year of 1947 and was claimed by said partnership as a deduction on its return for the said year, in accordance with the method of accounting regularly employed in keeping its books of account.

(r) The respondent has disallowed \$7500.00 of the repair expenses claimed by the Yellow Cab Company of Portland, a partnership, as a deduction for the calendar year 1947, said disallowance being based upon the theory that the said company made capital expenditures of \$100.00 per cab sold in that year in preparing and painting each cab for sale.

(s) The Yellow Cab Company of Portland, a partnership, maintains its own garage and staff of mechanics and makes any and all repairs necessary to its cabs therein. The repair and painting expenses incurred by the said company represent repairs required in the ordinary course of business, and were charged to the account of repairs and maintenance in accordance with the method of accounting regularly employed and established many years before.

(t) The respondent has not set forth the facts which form the basis for his increase of petitioner's partnership income from the Yellow Cab Company of Seattle, Washington for the year 1947, nor for his increase in partnership income of petitioner

from the Queen City Garage, Seattle, Washington. Petitioner therefore alleges on information and belief that the partnership income reported by her on her return for said year correctly reflected the correct partnership income in said enterprises for said year.

(u) Petitioner reported on her estimated tax for the year 1945 the full amount of tax estimated to be due and owing for said year and the penalty proposed for the said year is without foundation.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that there is no deficiency in income taxes for any of the years 1945, 1946 and 1947 and that petitioner is not subject to any penalties determined by the respondent, or any part thereof.

/s/ R. T. JACOB

Of Counsel: Jacob, Jones & Brown.

Duly Verified.

#### EXHIBIT "A"

1112 Cascade Building, Portland 4, Oregon

September 28, 1953

ARC-AP:SF Port:VEV:90D

Estate of Isabelle H. Royce, Deceased,  
Mr. B. Royce, Executor,  
306 West 21st Street,  
Vancouver, Washington.

Dear Mr. Royce:

You are advised that the determination of the

income tax liability of the Estate of Isabelle H. Royce, Deceased, for the taxable years ended December 31, 1945, 1946 and 1947, discloses deficiencies in the total amount of \$51,770.38 and a penalty of \$2,588.89 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiencies. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or

on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

**T. COLEMAN ANDREWS,**  
Commissioner.

By /s/ A. N. WILLIAMS,  
Associate Chief, Appellate Division.

Enclosures: Statement Form 1276 Agreement Form  
870.

VEVelenel1a

ARC-Ap:SF  
Port:VEV:90D

#### STATEMENT

Estate of Isabelle H. Royce, Deceased  
B. Royce, Executor,  
306 West 21st Street,  
Vancouver, Washington

Income tax liability for the taxable years ended  
December 31, 1945, 1946 and 1947.

		Sec. 294(d)(2)
Year	Deficiency	Penalty
1945	\$31,913.80	\$2,588.89
1946	11,435.22	—
1947	8,421.36	—
Totals	<u>\$51,770.38</u>	<u>\$2,588.89</u>

In making this determination of the decedent's income tax liability, careful consideration has been given to the report of examination dated February 20, 1951, and to your protest dated August 17, 1951.

The 6% penalty for the substantial underestimate

of estimated tax has been asserted for the taxable year ended December 31, 1945, in accordance with the provisions of section 294(d)(2) of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Robert T. Jacob, 917 Public Service Building, Portland 4, Oregon, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$103,416.14
Unallowable deductions and additional income:	
(a) Dividends (Oregon Motor Stages)..	\$21,875.00
(b) Additional distribution (Oregon Motor Stages) ..	519.05
(c) Farm loss .....	2,951.55
(d) Partnership income .....	10,612.61      35,958.21
Total .....	\$139,374.35
Non-taxable income and additional deductions:	
(e) Capital gains .....	\$ 1,464.82
(f) Interest expense .....	467.47      1,932.29
Net income adjusted.....	\$137,442.06

Explanation of Adjustments

(a) It has been determined that by reason of a transaction whereby the Oregon Motor Stages acquired 350 shares of its stock issued in the name of L. R. Bentson, the marital community realized taxable community income in the amount of \$43,750.00, of which one-half, or \$21,875.00, is taxable to decedent.

(b) It has been further determined that in connection with the transaction whereby Oregon Motor Stages acquired 350 shares of its stock, that that corporation paid interest to the American Business Credit Corporation and attorney fees in the respective total amounts of \$8,054.80 and \$2,135.41. With respect to these sums, this office holds that to the extent of \$1,006.85 and \$31.25, respectively, payment of interest and attorney fees was in satisfaction of a personal liability of B. Royce incurred in connection with the transaction whereby he acquired the stock of Oregon Motor Stages and is income of the marital community. The decedent's reported income has therefore been increased by \$519.05, being one-half of a total of \$1,006.85 and \$31.25.

(c) It has been determined that the farm loss of the marital community for the calendar year 1945 was in the amount of \$23,691.68 rather than \$29,-594.78 as reported in decedent's return, and decedent's community share was therefore \$11,845.84 rather than \$14,797.39 as reported. The reported net income has accordingly been increased by the amount of \$2,951.55. This increase consists of one-half of the gains from the sales of livestock totaling \$5,903.10, which this office holds was from sales to customers in the ordinary course of business rather than capital gains, as reported.

(d) It has been determined that the marital community received partnership income for the calendar year 1945 in the amount of \$252,484.63 and that one-half of such sum, or \$126,242.32 is taxable as

decedent's separate income. The reported partnership income in the amount of \$115,629.71 has therefore been increased by the amount of \$10,612.61.

(e) In the return filed by the decedent for the calendar year 1945, recognized capital gains were reported in the amount of \$3,271.58. It has been determined that the correct amount of capital gains taxable to decedent is in the amount of \$1,860.76 and the reported net income has therefore been decreased by the amount of \$1,464.82, such decrease consisting of the following adjustments:

(1) Partnership capital gains.....	\$ 10.96
(2) Sales of livestock .....	(1,475.78
Decrease .....	(\$1,464.82)

(1) It has been determined that decedent's community share of the capital gains from the partnership Yellow Cab Company of Portland, Oregon, was in the amount of \$141.25, rather than \$130.29 as reported in decedent's 1945 return, and the reported capital gains have accordingly been increased by the amount of \$10.96.

(2) In the return filed by the decedent for the calendar year 1945, a net long-term capital gain from the sale or exchange of livestock purchased or raised was reported in the amount of \$2,955.30, of which one-half, or \$1,477.65, was included as taxable income of decedent under the State of Washington community property law provisions. It has been determined that the correct amount of gains from the sale of livestock was in the amount of

\$7.49, of which 50%, or \$3.75, is recognized and that decedent's community share thereof is in the amount of \$1.87. The reported capital gains have therefore been decreased in the amount of \$1,475.-  
78. See Item (c) above.

(f) It has been determined that of the amount of \$1,006.85 held under item (b) above to be taxable income of the marital community, the sum of \$467.-47 is allowable as a deduction for interest paid in computing decedent's income for the year 1945.

Taxable Year Ended December 31, 1945

Computation of Income Tax

Net income adjusted.....	\$137,442.06
Less: Excess of net long-term capital gains over net short-term capital loss.....	1,806.76
Ordinary net income.....	\$135,637.30
Less: Normal tax exemption.....	500.00
Balance subject to normal tax.....	\$135,137.30
Normal tax—3% of \$135,137.30.....	\$ 4,054.12
Ordinary net income.....	\$135,637.30
Less: Surtax exemptions.....	500.00
Balance subject to surtax.....	\$135,137.30
Surtax .....	98,592.20
Partial tax .....	\$102,646.32
Plus: 50% of \$1,806.76.....	903.38
Income tax liability.....	\$103,549.70
Income tax liability disclosed by return:	
Account No. 3015686 - Washington.....	71,635.90
Deficiency in income tax.....	\$ 31,913.80

## Taxable Year Ended December 31, 1945—(Continued)

Penalty, section 294(d)(2), Internal Revenue Code—Year 1945:	
Income tax liability as adjusted.....	\$103,549.70
Less: Withholding tax.....	None
Paid on estimated declaration.....	\$60,401.60      60,401.60
 Difference .....	 <hr/>
Difference .....	\$ 43,148.10
 Penalty (6% of \$43,148.10).....	 <hr/>
Penalty (6% of \$43,148.10).....	\$ 2,588.89
 <hr/>	 <hr/>

## Taxable Year Ended December 31, 1946

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$ 94,537.80
Unallowable deductions and additional income:	
(a) Net gain from sale of other than capital assets .....	\$ 26.23
(b) Partnership income .....	13,173.30
(c) Other income .....	932.07      14,131.60
 Total .....	 <hr/>
Total .....	\$108,669.40
Non-taxable income and additional deductions:	
(d) Capital gains .....	654.62
 Net income adjusted.....	 <hr/>
Net income adjusted.....	\$108,014.78
 <hr/>	 <hr/>

## Explanation of Adjustments

(a) It has been determined that of the long-term capital gains and losses reported in the decedent's return, the net amount of \$26.23 constitutes ordinary income from the sale of other than capital assets, and the reported income has been increased accordingly by the sum of \$26.23 computed as follows:

(1) Gains from sale of livestock.....	\$2,201.77
(2) Losses from sale of livestock.....	(1,961.56)
(3) Yellow Cab Company of Seattle.....	( 213.98)
 Net increase .....	 <hr/>
Net increase .....	\$ 26.23
 <hr/>	 <hr/>

(1) In the return filed by the decedent for the

calendar year 1946, long-term capital gains of the marital community were reported from the sale of livestock raised and purchased in the total amount of \$5,111.53, of which one-half was taxable to decedent as community income. It has been determined that of such sales the sum of \$4,403.53 were sales of livestock held for sale in the ordinary course of business. The gains from the sale of livestock, reported by decedent as sales of property other than capital assets, has accordingly been increased by one-half of \$4,403.53, or \$2,201.77.

(2) In the return filed by the decedent for the calendar year 1946, long-term capital losses of the marital community were reported from the sale of livestock purchased in the total amount of \$3,923.12, of which one-half was decedent's community share. It has been determined that the loss of \$3,923.12 was from the sale of livestock held for sale to customers in the ordinary course of business. Decedent's gains from the sale of livestock, reported as sales of property other than capital assets, has accordingly been decreased by one-half of \$3,923.12, or \$1,961.56.

(3) In the decedent's return filed for the calendar year 1946 the sum of \$213.98 was reported as her community portion of the net short-term capital loss of the partnership Yellow Cab Company of Seattle. It has been determined that such reported loss was from the sale of property other than capital assets and decedent's reported income from the sale of other than capital assets has accordingly been decreased by the amount of \$213.98.

(b) It has been determined that the marital com-

munity received partnership income for the calendar year 1946 in the amount of \$253,002.14 and that decedent's community share is \$126,501.07 rather than \$113,327.77 as reported. The reported partnership income has accordingly been increased by the amount of \$13,173.30, computed as follows:

	Corrected Income
Royce Brothers .....	\$ 5,989.42
Queen City Garage.....	3,014.96
The Gray Line Tours .....	12,598.66
Cloverhill Guernsey Farm.....	( 8,817.50)
Necanicum Fur Farm.....	( 2,082.98)
Yellow Cab Company of Seattle.....	116,565.17
Yellow Cab Company of Portland.....	125,734.41
 Total partnership income as corrected.....	 <u>\$253,002.14</u>
 Community share, one-half.....	 <u>\$126,501.07</u>
Reported .....	113,327.77
 Increase .....	 <u>\$ 13,173.30</u>

In the partnership return filed by the Yellow Cab Company of Portland for the calendar year 1946, the distributive share of the ordinary net income of the marital community was shown as being in the amount of \$121,723.76. It has now been determined that the distributive share of the marital community from such partnership is in the amount of \$125,-734.41, computed as follows:

Ordinary net income as disclosed by return.....	\$243,447.51
 Unallowable deductions and additional income:	
(1) Depreciation .....	\$3,034.93
(2) Cost of partnership interest.....	4,986.38      8,021.31
 Ordinary net income adjusted.....	
Decedent's distributive share.....	 <u>\$251,468.82</u> <u>\$125,734.41</u>

(1) It has been determined that the depreciation allowable on taxicabs is in the amount of \$2,102.68 rather than \$5,137.61 as claimed, and the ordinary net income of the partnership has been increased accordingly in the amount of \$3,034.93.

(2) The record shows that prior to August 1, 1942, Charles W. Keffer and C. H. Luton were the owners of .659% and .906% interests, respectively, in the partnership Yellow Cab Company of Portland. On or about that date, August 1, 1942, B. Royce, and his brother, E. Royce, purchased the interests of these individuals under an agreement whereby, *inter alia*, each of the vendors was to receive 1% of the partnership net profits for a period of five years.

During the year under review, payments to them were charged to partnership operation as compensation. This office holds that payments made in 1946 totaling \$4,986.38 made by the partnership under the contract and in the manner referred to in the preceding paragraph were capital in nature and not deductible in computing partnership income.

(c) It has been determined that during the year 1946 the marital community received payments totaling \$6,636.36 upon a contract purchased by B. Royce from L. W. Hendrickson, and that the decedent's community share of the profits from such payments is in the amount of \$932.07, computed as follows:

Total proceeds .....	\$25,031.14	100.0000%
Cost .....	\$18,000.00	71.9104%
Profit .....		28.0896%

Payments received in 1946.....	\$6,636.36
Profit realized in 1947—\$6,636.36x28.0896%	\$1,864.13
50% Community .....	\$ 932.06
Taxable to decedent.....	\$ 932.07

(d) It has been determined that decedent's community share of capital gains for the calendar year 1946 is in the amount of \$3,158.90 rather than \$3,813.52 as reported in her return filed for the calendar year 1946, and such reported capital gains have accordingly been decreased by the amount of \$634.62, computed as follows:

(1) Capital gains from sale of livestock.....	(\$1,100.89)
(2) Capital loss from sale of livestock.....	980.78
(3) Yellow Cab Company of Portland.....	11.16
(4) Yellow Cab Company of Seattle.....	( 445.67)
(5) Mathematical error .....	( 100.00)
Decrease .....	<hr/> (\$ 654.62) <hr/>

(1) It has been determined that of the long-term capital gains from the sale of livestock reported in decedent's return filed for the calendar year 1946, the amount of \$2,201.77 was from the sale of livestock held for sale to customers in the ordinary course of business and is therefore ordinary income. The decedent's reported capital gains are therefore decreased by the amount of 50% of such gains, or \$1,100.89.

(2) It has been determined that of the long-term capital losses from the sale of livestock reported in decedent's return filed for the calendar year 1946, the amount of \$1,961.56 was from the sale of livestock held for sale to customers in the ordinary

course of business and is therefore an ordinary loss. The decedent's reported capital gains are therefore increased by the amount of 50% of such losses, or \$980.78.

(3) It has been determined that decedent's community share of the long-term capital gains reported in the partnership return of Yellow Cab Company of Portland is in the amount of \$143.75 rather than \$132.59 as reported in her return filed for the calendar year 1946. The reported capital gains are therefore increased by the amount of \$11.16.

(4) In the return filed by the decedent for the calendar year 1946, there was reported as her community share of the capital gains of the partnership Yellow Cab Company of Seattle, a net long-term capital gain of \$251.75 and a net short-term capital loss of \$213.98. It has been determined that the partnership realized a net long-term capital loss of \$3,199.25, of which decedent's distributive community share was \$407.90, and that the partnership realized no short-term capital gains or losses. The reported net capital gains have accordingly been decreased by the amount of \$445.67.

(5) The decedent in her return filed for the calendar year 1946, erroneously reported 50% of long-term capital losses in the amount of \$2,468.97 as being \$1,134.48, rather than \$1,234.48. The reported capital gains are accordingly decreased by the amount of \$100.00.

## Taxable Year Ended December 31, 1946

## Computation of Income Tax

Net income adjusted.....	\$108,014.78
Less: Excess of net long-term capital gain over net short-term capital loss.....	3,158.90
Ordinary net income.....	\$104,855.88
Less: Exemption .....	500.00
Balance subject to tentative tax.....	\$104,355.88
Tentative tax .....	\$ 71,196.73
Less: 5% of tentative tax.....	3,559.84
Partial tax .....	\$ 67,636.89
Plus: 50% of \$3,158.90.....	1,579.45
Income tax liability.....	\$ 69,216.34
Income tax liability as disclosed by return:	
Account No. 3022246 - Washington.....	57,781.12
Deficiency in income tax.....	\$ 11,435.22

## Taxable Year Ended December 31, 1947

## Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$76,468.68
Unallowable deductions and additional income:	
(a) Sales of other than capital assets.....	\$ 1,140.74
(b) Partnership income .....	11,197.22
(c) Other income .....	932.07 13,270.03
Total .....	\$89,738.71
Non-taxable income and additional deductions:	
(d) Capital gains .....	3,169.45
Net income adjusted.....	\$86,569.26

## Explanation of Adjustments

- (a) In the income tax return filed by the decedent for the calendar year 1947, she reported a net capital gain of \$2,281.47 from the sale of livestock purchased and raised, of which 50%, or \$1,140.74,

was taken into account under the provisions of section 117(b) of the Internal Revenue Code. One-half of such recognized gain, or \$570.37, was reported in decedent's return as taxable income to her and the balance of \$570.36 was reported as income in the separate return filed by B. Royce under Washington community property law provisions. It has been determined that such reported gain was from sale of livestock held for sale to customers in the ordinary course of business and is therefore taxable as ordinary income rather than as a capital gain as reported. The reported ordinary community income has accordingly been increased by \$1,140.74.

(b) In the return filed by the decedent for the calendar year 1947, she reported the sum of \$81,286.83 as her distributive share of income of certain partnerships. The following tabulation shows the names and addresses of such partnerships, the decedent's distributive share of incomes reported as compared with the incomes as determined by this office and the total increase as determined:

Name of Partnership	Income Reported	Income As Corrected
Yellow Cab Company, Portland, Ore...	\$ 47,648.53	\$ 62,678.02
Necanicum Fur Farm, Seaside, Ore....	(1,144.93)	(1,144.93)
Deluxe Attractions, Portland, Ore.....	(2,592.94)	(2,592.94)
Cloverhill Guernsey Farm, Medford, Ore. ....	( 112.43)	None
Royce Bros., Portland, Ore.....	4,502.06	4,154.20
Queen City Garage, Seattle, Wash.....	2,934.54	3,043.24
Gray Line Tours, Seattle, Wash.....	29,039.64	29,039.64
Yellow Cab Company, Seattle, Wash....	82,932.39	89,790.87
Cloverhill Guernsey Farms, Medford, Ore. ....	( 633.20)	None
 Totals .....	 <u>\$162,573.66</u>	 <u>\$184,968.10</u>

Community share—one-half .....	\$ 81,286.83	\$ 92,484.05
Income reported .....		81,286.83
Increase .....		<u>\$ 11,197.22</u>

The adjustments of decedent's income attributable to the revision of partnership income of the Yellow Cab Company of Portland are shown below:

Ordinary net income reported in partnership return.... \$ 95,297.06  
Unallowable deductions and additional income:

(1) Depreciation .....	\$9,750.67	
(2) Cost of partnership interest.....	2,908.60	
(3) Taxes and licenses.....	9,899.71	
(4) Repairs .....	7,500.00	30,058.98

Ordinary net income adjusted..... \$125,356.04

Decedent's distributive share of the above-  
adjusted income .....

(1) It has been determined that the depreciation allowable on taxicabs is in the amount of \$20,615.82 rather than \$30,366.49 as claimed and the net income of the partnership has been increased accordingly in the amount of \$9,750.67.

(2) On the basis of the facts and for the reasons stated heretofore, it has been determined that the sum of \$2,908.60 charged to the partnership operation for the year 1947 as compensation to Charles W. Keffer and C. H. Luton was capital in nature and not deductible in computing partnership income.

(3) It has been determined that the accrued City 2% Gross Revenue Tax in the amount of \$9,899.71

claimed as a deduction in the return filed for the calendar year 1947 was being contested by the partnership, and that the deduction is therefore unallowable.

(4) It has been determined that of the deduction claimed for repairs in the partnership return filed for the calendar year 1947, the amount of \$7,500.00 was incurred in preparing used cabs for sale. Such expenditures are therefore capital in nature and not deductible as an ordinary and necessary business expense.

(c) It has been determined that during the year 1947, B. Royce received payments totaling \$6,636.36 upon a contract purchased by him from L. W. Hendrickson, and that the decedent's community share of the profits from such payments was in the amount of \$932.70, computed as follows:

Total proceeds .....	\$25,031.14	100.0000%
Cost .....	18,000.00	71.9104%
Profit .....	<u>\$ 7,031.14</u>	<u>28.0896%</u>
Payment received in 1947.....		\$6,636.36
Profit realized in 1947—\$6,636.36x28.0896%		\$1,864.13
50% Community .....		\$ 932.06
Taxable to decedent .....		\$ 932.07

(d) In the return filed by the decedent for the calendar year 1947, a net gain was reported from sales or exchanges of capital assets in the amount of \$13,168.55. It has been determined that a net gain from such sales or exchanges was realized in the amount of \$9,999.10, and the reported net income has accordingly been decreased by the amount of \$3,169.45, computed as follows:

	Reported	Adjusted
Livestock sales .....	\$ 570.36	None
Farm machinery .....	57.26	\$ 57.26
Miscellaneous sales .....	( 72.59)	( 72.59)
Cloverhill Guernsey Dairy.....	( 397.98)	None
Yellow Cab Company of Portland.....	5,928.66	5,224.33
Yellow Cab Company of Seattle.....	6,264.68	3,971.94
Gray Line Tours.....	347.89	347.89
Cloverhill Guernsey Farm.....	509.85	509.85
Necanicum Fur Farm.....	( 39.58)	( 39.58)
 Totals .....	 <u>\$13,168.55</u>	 <u>\$ 9,999.10</u>
Capital gains reported.....		13,168.55
 Decrease .....	 <u>\$ 3,169.45</u>	 <u>          </u>

## Taxable Year Ended December 31, 1947

## Computation of Income Tax

Net income adjusted .....	\$86,569.26
Less: Excess of net long-term capital gain over net short-term capital loss.....	9,999.10
 Ordinary net income.....	 \$76,570.16
Less: Exemption .....	500.00
 Balance subject to tentative tax.....	 \$76,070.16
 Tentative tax .....	 \$47,036.83
Less: 5% of tentative tax.....	2,351.84
 Partial tax .....	 \$44,684.99
Plus: 50% of \$9,999.10.....	4,999.55
 Income tax liability.....	 \$49,684.54
Income tax liability disclosed by return: Account No. 300018 - Washington.....	41,263.18
 Deficiency in income tax.....	 \$ 8,421.36

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

[Title of Tax Court and Docket No. 51529.]

## ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits and denies as follows:

1. Admits the allegations contained in paragraph I of the petition.
2. Admits the allegations contained in paragraph II of the petition.
3. Admits the allegations contained in paragraph III of the petition.
4. Denies that he erred in his determination of the deficiencies in income tax and penalty as shown by the notice of deficiency from which the appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.
5. (a) Admits the allegations contained in paragraph V(a) of the petition.  
(b) Admits the allegations contained in the first two sentences of paragraph V(b) of the petition. Denies the remaining allegations contained in paragraph V(b) of the petition.  
(c), (d), (e), (f) and (g) Denies the allegations contained in paragraph V(c), (d), (e), (f) and (g) of the petition.  
(h) Admits the allegations contained in the first sentence of paragraph V(h) of the petition. Denies the remaining allegations contained in paragraph V(h) of the petition.

(i), (j) and (k) Denies the allegations contained in paragraph V(i), (j) and (k) of the petition.

(l) Admits the allegations contained in paragraph V(l) of the petition.

(m) Denies the allegations contained in paragraph V(m) of the petition.

(n) Admits that on or about November 28, 1942 petitioner's husband, B. Royce, and E. Royce purchased the partnership interest of Charles Keffer and C. H. Luton in the Yellow Cab Company of Portland, a partnership. Denies the remaining allegations contained in paragraph V(n) of the petition.

(o) Admits the allegations contained in the first sentence of paragraph V(o) of the petition. Denies the remaining allegations contained in paragraph V(o) of the petition.

(p) Admits the allegations contained in the first two sentences of paragraph V(p) of the petition. Denies the remaining allegations contained in paragraph V(p) of the petition.

(q) Admits the allegations contained in the first sentence of paragraph V(q) of the petition. Admits that the amount of \$9,899.71 was claimed by the partnership as a deduction on its return for the year 1947. Denies the remaining allegations contained in paragraph V(q) of the petition.

(r) Admits that the respondent has disallowed \$7,500.00 of the expenses incurred by the Yellow Cab Company of Portland, a partnership, in preparing cabs for sale, which amount was claimed by

the partnership as a deduction for the calendar year 1947. Denies the remaining allegations contained in paragraph V(r) of the petition.

(s), (t) and (u) Denies the allegations contained in paragraph V(s), (t) and (u) of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of the deficiencies and penalty be approved.

/s/ DANIEL A. TAYLOR, WHP  
Chief Counsel, Internal Revenue  
Service.

Of Counsel: Wilford H. Payne, Associate Appellate  
Counsel, John D. Picco, Special Attorney, In-  
ternal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 23, 1954.

---

[Title of Tax Court and Docket No. 51531.]

## PETITION

The above named petitioners hereby petition the above entitled Court for a redetermination of the deficiency set forth by the respondent in his Notice of Deficiency (Bureau Symbols ARC-Ap:SF Port: VEV:90D) dated the 28th day of September, 1953, and as a basis for this proceeding alleges as follows:

**I.**

Petitioners are husband and wife residing in Portland, Multnomah County, State of Oregon, and filed their Federal income tax returns for the year involved herein with the Collector of Internal Revenue for the District of Oregon at Portland, Oregon.

**II.**

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner from Portland, Oregon, September 28, 1953.

**III.**

The amount and character of the alleged deficiency is as follows:

Year	Deficiency	Sec. 294(d)(2) Penalty
1945	\$66,977.56	\$4,035.66

**IV.**

In arriving at the alleged deficiency the respondent has committed the following errors:

1. He erred in including in petitioners' income as dividends from Oregon Motor Stages the sum of \$87,500.00, or any sum whatsoever.
2. He further erred in including in petitioners' income as an additional distribution from Oregon Motor Stages or as income of any character the sum of \$2,076.02, or any sum whatsoever.
3. The respondent further erred in asserting a penalty of \$4,035.66, or any sum whatsoever, as set out in said Notice of Deficiency for filing an underestimate of estimated tax for the year in controversy.

## V.

The facts upon which petitioners rely as a basis for this appeal are as follows:

(a) Taxpayers were husband and wife living together during the entire year 1945 and were entitled to three additional exemptions by reason of dependency, kept their records and reported income on the basis of cash receipts and disbursements.

(b) During the month of June, 1945, petitioner, Robert T. Jacob, and other associates, entered into negotiations with the then stockholders of Oregon Motor Stages for the acquisition of the outstanding stock of that company.

(c) During the negotiations, Mr. L. R. Bentson, residing at 411 East 15th Street, North Vancouver, B. C., an uncle of E. and B. Royce, came to Portland to visit his said nephews and while here learned of the negotiations in progress. On several occasions prior thereto, either while visiting in Portland or during visits of the Royces in Vancouver, Mr. Bentson had stated to his nephews that he was desirous of acquiring an interest in some of their business transactions and upon being told of the pending negotiations, expressed a desire to participate.

(d) The desires of Mr. Bentson were communicated to petitioner and other members of the group and all consented to the entry into the pool by Mr. Bentson. Shares of said stock were thereupon subscribed for and paid for upon the basis of \$1,000.00 per share as follows:

	No. of Shares	Cost
E. Royce .....	145	\$145,000.00
B. Royce .....	50	50,000.00
Fred C. Niederkrome .....	55	55,000.00
A. L. Schneider.....	50	50,000.00
Robert T. Jacob.....	100	100,000.00
L. R. Bentson.....	350	350,000.00
	—	—
	750	\$750,000.00

(e) Prior to Mr. Bentson's visit to Portland, petitioner, Robert T. Jacob, had made arrangements for the acquisition of additional shares of said stock and he, of his own personal knowledge, was acquainted with the fact that other members of the negotiating group were making arrangements for the acquisition of additional shares of said stock and were in contact with men in Seattle and San Francisco who desired to purchase some of said stock, but when we were informed of Mr. Bentson's desire to acquire shares, discontinued the arrangements and we confined our activities to the acquisition of the shares of stock indicated above.

(f) Petitioner, Robert T. Jacob, was informed at the time that the said Bentson had been a successful mine operator in Alaska and that he was a man of considerable means; that Canadian funds were blocked because of the existence of war regulations; that the said Bentson had a niece residing in the City of Portland for whom he was desirous of creating an estate in the United States; that the acquisition by the said Bentson of shares of stock of Oregon Motor Stages appeared to him to afford a desirable vehicle for the accomplishment of that purpose; that he, the said Bentson, had been in-

formed of the earnings and dividend record of the said Oregon Motor Stages and was enthusiastic over the possibilities of his being able to build up the estate he desired for his said niece; and consequently, he requested permission to enter the pool.

(g) That petitioner, Robert T. Jacob's acquaintance with the said Bentson convinced him that the said Bentson would be a desirable associate in the ownership of the said stock and although petitioners were willing, able and had made arrangements to acquire additional stock, he acquiesced in Bentson's request to become a purchaser of said stock.

(h) That although petitioner, Robert T. Jacob, surrendered his stock to the said Bentson to be pledged as security for a loan obtained by the said Bentson from the American Business Credit Corporation, he was not an obligor upon the note of the said Bentson to said corporation, and received no benefit therefrom either from the advancing of said monies or from the later retirement of said stock.

(i) On or about August or September, 1945, Mr. Bentson offered to surrender his 350 shares of stock to the corporation for the corporation's promise to pay off his obligation to the American Business Credit Corporation; that in accordance with the proposal made by the said Bentson for the surrender of his stock he was motivated by the cessation of hostilities in World War II, and was under apprehension that the profits and earnings of the said Oregon Motor Stages would be curtailed and that the dividend policy which he anticipated would have partially provided funds for the liquidation of

his said note would be discontinued. His proposal contained the following statement:

"My object in desiring to dispose of this stock is that the sudden end of the war has made a great difference in my plans, and on this account I desire to be relieved of my obligation to the said American Business Credit Corporation."

(j) That the value of petitioners' stock in said Oregon Motor Stages was not enhanced in value by the surrender of the stock of the said Bentson, but the value thereof was, in fact, depreciated by the surrender of said stock by the said Bentson and the distribution of the corporation's cash to him, and the company's operations were curtailed thereby.

(k) The cancellation or redemption or purchase by Oregon Motor Stages was of all the stock of a particular stockholder, Mr. Bentson, and he thereafter ceased to be interested in the affairs of the corporation and neither Mr. Bentson nor any other member of the said group retained any beneficial or other interest in said stock thereafter. Neither Mr. Bentson nor any other member of the said group realized any economic, taxable or other gain of any character from the transaction. There was no pro rata or any other type of distribution from the corporation to the stockholders.

(l) That the payment of interest and attorneys fees by Oregon Motor Stages was in payment of obligations of the company and did not in any sense represent a taxable distribution to or on behalf of petitioners.

Wherefore, petitioners pray that the Court may

hear and determine this their appeal and that it declare petitioners' return for 1945 was correct and that there is no deficiency in tax and/or penalty for said year 1945.

/s/ GARTHE BROWN,  
Counsel for Petitioners.

Of Counsel:

Jacob, Jones & Brown.

Duly Verified.

EXHIBIT "A"  
U. S. Treasury Department  
Office of the Regional Commissioner  
Internal Revenue Service  
1112 Cascade Building  
Portland 4, Oregon

Sep. 28, 1953

InReplying Refer To: ARC-Ap:SF Port:VEV:  
90D.

Mr. Robert T. Jacob  
Mrs. Agnes C. Jacob  
917 Public Service Building  
Portland 4, Oregon

Dear Mr. and Mrs. Jacob:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1945, discloses a deficiency in the amount of \$66,977.56 and \$4,035.66 in penalty, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,  
Commissioner,

/s/ By A. N. Williams,

Associate Chief, Appellate Division.

Enclosures:

Statement

Form 1276

Agreement Form 870

**STATEMENT**

Mr. Robert T. Jacob and Mrs. Agnes C. Jacob  
 Husband and Wife  
 917 Public Service Building  
 Portland 4, Oregon

Income tax liability for the taxable year ended December 31, 1945.

**Section 294(d)(2)**

Year	Deficiency	Penalty
1945	\$66,977.56	\$4,035.66

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated February 9, 1951, and to your protest dated September 4, 1951.

The 6% penalty for the substantial underestimate of estimated tax has been asserted in accordance with the provisions of Section 294(d)(2) of the Internal Revenue Code.

**Taxable Year Ended December 31, 1945****Adjustments to Net Income**

Net income as disclosed by return, Form 1040..... \$ 16,586.72

**Unallowable deductions and additional income:**

(a) Dividends (Oregon Motor Stages)..	\$87,500.00
(b) Additional distribution (Oregon Motor Stages) ..	2,076.20
	<hr/>
Total .....	89,576.20

Total .....	\$106,162.92
-------------	--------------

**Non-taxable income and additional deductions:**

(c) Interest expense .....	1,869.86
	<hr/>
Net income adjusted.....	\$104,293.06
	<hr/>

**Explanation of Adjustments**

(a) The records of this office show that prior to

July 2, 1945, you, E. Royce, B. Royce, Fred C. Niederkrome and A. L. Schneider negotiated for the purchase of the capital stock of Oregon Motor Stages, Portland, Oregon, an Oregon corporation engaged in the business of bus transportation. The outstanding stock of that corporation then consisted of 750 common shares, with a par value of \$100.00 per share.

As a result of the negotiations referred to above, on or about July 2, 1945, you and your associates purchased shares of Oregon Motor Stages in the number and at the cost shown below:

	Shares	Cost
E. Royce .....	145	\$145,000.00
B. Royce .....	50	50,000.00
Robert T. Jacob.....	100	100,000.00
Fred C. Niederkrome.....	55	55,000.00
A. L. Schneider.....	50	50,000.00
Total .....	400	\$400,000.00

In accordance with the plan adopted, the remaining 350 shares of Oregon Motor Stages stock were acquired in the name of L. R. Bentson, 411 E. 15th Street, North Vancouver, B. C., an uncle of E. Royce and B. Royce, in consideration of payment of \$350,000 cash. Such payment was made from the proceeds of a loan obtained by E. Royce acting for you, himself and your above-named associates, through the Portland Branch of the American Business Credit Corporation, New York City, on a 90-day note which was signed by E. Royce and L. R. Bentson and which was collateralized by deposit of

the entire 750 shares of stock of Oregon Motor Stages.

On or about September 6, 1945, pursuant to the plan adopted by you and your associates, as aforesaid, Oregon Motor Stages acquired the 350 shares of its own stock then standing in the name of L. R. Bentson and issued its check to him in the sum of \$350,000.00. This check was immediately endorsed and delivered to the American Business Credit Corporation in satisfaction of the 90-day note signed by E. Royce and L. R. Bentson.

It has been determined that it was not intended that L. R. Bentson should acquire, nor did he at any time acquire, any bona fide or actual beneficial interest in the stock of Oregon Motor Stages.

It has been further determined that the accumulated earnings and profits of Oregon Motor Stages available for distribution as dividends during the year 1945 was in excess of \$350,000.00.

This office holds that the transaction whereby Oregon Motor Stages acquired 350 shares of its capital stock, which were issued in the name of L. R. Bentson, for the sum of \$350,000.00, was consummated at such a time and in such a manner as to result in the realization of taxable income to you in the amount of \$87,500.00, such sum being that portion of the total sum of \$350,000.00 which 100 shares of stock of Oregon Motor Stages owned by you bears to the total of 400 shares of such stock owned by you, E. Royce, B. Royce, Fred C. Niederkrome and A. L. Schneider.

(b) It has been further determined that in con-

nnection with the transaction whereby Oregon Motor Stages acquired 350 shares of its stock in the manner stated above, that corporation paid interest to the American Business Credit Corporation and attorney fees in the respective total amounts of \$8,054.80 and \$2,135.41. With respect to these sums, this office holds that to the extent of \$2,013.70 and \$62.50 respectively, the payment of interest and attorney fees was in satisfaction of your personal liability, incurred in connection with the transactions whereby you acquired the stock of Oregon Motor Stages. Your reported income has, therefore, been increased by \$2,076.20.

(c) It has been determined that of the amount of \$2,013.70 heretofore held under item (b) above to be taxable to you, the sum of \$1,869.86 is allowable as a deduction for interest paid in 1945.

Computation of Income Tax

Net income adjusted.....	\$104,293.06
Less: Excess of net long-term capital gain over short-term capital loss.....	639.76
 Ordinary net income.....	 \$103,653.30
Less: Normal tax exemption.....	500.00
 Balance subject to normal tax.....	 \$103,153.30
Normal tax—3% of \$103,153.30.....	3,094.60
Ordinary net income.....	\$103,653.30
Less: Surtax exemptions.....	2,500.00
 Balance subject to surtax.....	 \$101,153.30
Surtax .....	68,346.44
 Partial tax .....	 \$ 71,441.04
Plus: 50% of \$639.76.....	319.88
 Income tax liability.....	 \$ 71,760.92

## Computation of Income Tax—(Continued)

Income tax liability disclosed by return,	
Account No. 3011423.....	4,783.36
Deficiency in income tax.....	<u>\$ 66,977.56</u>
Penalty, Sec. 294(d)(2), Internal Revenue Code	
Income tax liability as adjusted.....	\$ 71,760.92
Less: Withholding tax.....	None
Paid on Estimated declaration .....	\$4,500.00      4,500.00
Difference .....	<u>\$ 67,260.92</u>
Penalty (6% of \$67,260.92).....	<u>4,035.66</u>

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

[Title of Tax Court and Docket No. 51531.]

### ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph I of the petition.
2. Admits the allegations contained in paragraph II of the petition.
3. Admits the allegations contained in paragraph III of the petition.
4. Denies that he erred in his determination of the deficiency in income tax and penalty as shown by the notice of deficiency from which the appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.

5. (a) Admits the allegations contained in paragraph V(a) of the petition, except that it is denied that taxpayers were entitled to three additional exemptions by reason of dependency.

(b) Admits the allegations contained in paragraph V(b) of the petition.

(c) Denies the allegations contained in paragraph V(c) of the petition.

(d) Denies the allegations contained in paragraph V(d) of the petition. Alleges that the nature of the stock transaction including the acquisition, payment and disposition of the remaining 350 shares of Oregon Motor Stages stock was as explained on pages 1 to 3, inclusive, of Exhibit A attached to the petition on file in this proceeding.

(e) to (l), inclusive. Denies the allegations contained in Paragraph V(e) to (l), inclusive, of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioners' appeal be denied and that the Commissioner's determination of the deficiency and penalty be approved.

/s/ DANIEL A. TAYLOR, WHP

Chief Counsel, Internal Revenue  
Service.

Of Counsel: Wilford H. Payne, Associate Appellate  
Counsel, John D. Picco, Special Attorney, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 23, 1954.

[Title of Tax Court and Docket No. 51533.]

### PETITION

The above named petitioners hereby petition the above entitled Court for a redetermination of the deficiency set forth by the respondent in his Notice of Deficiency dated the 28th day of September, 1953, and as a basis for this proceeding alleges as follows:

#### I.

Petitioners are husband and wife residing near Clackamas, Clackamas County, State of Oregon, and filed their Federal income tax returns for the years involved herein with the Collector of Internal Revenue for the District of Oregon at Portland, Oregon.

#### II.

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioners from Portland, Oregon, under date of September 28, 1953.

#### III.

The within controversy involves an asserted deficiency in Federal income taxes and penalty for the years and in the amounts as set forth in the following schedule:

Year	Deficiency	Sec. 294(d)(2)	Penalty
1945	\$21,157.87		\$1,102.38
1948	2,348.28		
1949	722.40		
Totals	\$24,228.55		\$1,102.38

## IV.

In arriving at his conclusions as set forth in said Notice of Deficiency the respondent committed the following errors:

A. As to the calendar year 1945:

1. The respondent erred in including in petitioners' income the sum of \$43,750.00, or any sum whatsoever, as alleged dividends from Oregon Motor Stages.
2. The respondent further erred in including in petitioners' income the sum of \$1,038.10, or any sum whatsoever, as an additional distribution from the Oregon Motor Stages.
3. Respondent further erred in asserting a penalty of \$1,102.38, or any sum whatsoever, under the provisions of Section 294(d)(2), or under any other section, of Internal Revenue Code.

B. As to the calendar year 1948:

1. The respondent erred in including in petitioners' income the sum of \$700.00, or any sum whatsoever, as additional capital gains.
2. The respondent further erred in including in petitioners' income the sum of \$9,182.40, or any sum whatsoever, as income from the receipt of shares of the capital stock of Alder Gold-Copper Company.

C. As to the calendar year 1949:

1. The respondent erred in including in petitioners' income the sum of \$1,909.13, or any sum what-

soever, as income from the receipt of shares of the capital stock of Alder Gold-Copper Company.

## V.

The facts upon which petitioners rely as a basis for this proceeding are as follows:

a. During all of the years in question, petitioners were husband and wife living together and they are entitled to credit for three additional dependents.

b. During the year 1945, petitioner, Albert L. Schneider, and a number of associates entered into negotiation with the then stockholders of Oregon Motor Stages for the acquisition of all of the capital stock of said corporation. There were outstanding at that time 750 shares of stock of said company and the price upon which negotiations were based was \$1,000.00 per share. Petitioner, Albert L. Schneider, E. Royce, B. Royce, F. C. Niederkrome and R. T. Jacob began preparations for the acquisition of said stock, but Mr. L. R. Bentson of Vancouver, B. C., who was a relative of E. Royce and B. Royce, informed the group that he desired to acquire a portion of the stock and agreed to and did purchase 350 shares of its stock.

In the acquisition of his stock, Mr. Bentson advised the group that his funds were in Canada and were blocked, and it would be necessary for him to make arrangements to finance his purchase. Accordingly, a loan was negotiated on his behalf with the American Business Credit Corporation. In the transaction, I loaned my stock as an accommodation

to be pledged with Bentson's stock as security for said loan, but I did not participate in the negotiation of said loan and had no obligation whatsoever for its repayment.

After the conclusion of World War II in August, 1945, Mr. Bentson became apprehensive that the earnings of the corporation would be drastically curtailed and that the investment would not prove as profitable in the matter of liquidating his obligation as he had anticipated at the time of its purchase and, therefore, made an offer to the corporation to surrender his 350 shares of stock upon the corporation paying the interest on his obligation and liquidating the loan from American Business Credit Corporation. Upon the surrender of his shares of stock Oregon Motor Stages issued to him a check for the sum of \$350,000.00, which said check the said Bentson delivered to American Business Credit Corporation in payment of his said loan.

Neither petitioner, Albert L. Schneider, nor Bertha Schneider, received any part of said payment, either directly, indirectly, or constructively, nor did they receive any benefit directly or indirectly from the payment of said sum to the said Bentson.

c. The facts as set forth in paragraph b. above apply with equal force and effect to the item of \$1,038.10, included by the respondent in petitioners' income as an "additional distribution" (Oregon Motor Stages).

d. As to the "other income" alleged by the re-

spondent to have been received by me in the years 1948 and 1949 on account of common shares of the Alder Gold-Copper Company which was alleged to have a fair market value of 10c for the year 1948 and 0.97614c per share in the year 1949, this stock had no fair market value or other value whatsoever, at any time during the years of its receipt. The company has operated consistently at heavy losses and there was not a general market for said stock.

e. As to the alleged capital gain, the stock in question was acquired by petitioners in the year 1946 for the sum of \$3,000.00 and sold in the year 1948 for the sum of \$4,000.00, resulting in a net gain of \$1,000.00, 50% of which was reportable for Federal tax purposes and this amount was reported in the original return.

f. On petitioners' estimated tax for the year 1945, the full amount of tax estimated to be due and owing was reported, and accordingly the penalty proposed is without foundation.

Wherefore, petitioners pray that the Court hear and determine their appeal and that it declare that the respondent committed the errors assigned herein and that he erroneously increased petitioners' income and erroneously asserted deficiencies against petitioners for said years.

/s/ R. T. JACOB,  
Counsel for Petitioners.

Of Counsel:

Jacob, Jones & Brown.  
Duly Verified.

## EXHIBIT "A"

Regional  
1112 Cascade Building  
Portland 4, Oregon

Sep. 28, 1953

ARC-Ap:SF  
Port:VEV:90D

Mr. Albert L. Schneider  
Mrs. Bertha Schneider  
Route 1, Box 235  
Clackamas, Oregon

Dear Mr. and Mrs. Schneider:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1945, 1948 and 1949, discloses deficiencies in the total amount of \$24,228.55 and a penalty of \$1,102.38 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiencies. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal

holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1112 Cascade Building, Portland 4, Oregon. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,

Commissioner,

/s/ By A. N. Williams,

Associate Chief, Appellate Division.

Enclosures:

Statement

Form 1276

Agreement Form 870

VEVelene la

### STATEMENT

Mr. Albert L. Schneider and Mrs. Bertha Schneider  
Husband and Wife  
Route 1, Box 235  
Clackamas, Oregon

Income tax liability for the taxable years ended  
December 31, 1945, 1948 and 1949.

Year	Deficiency	Sec. 294(d)(2)
1945	\$21,157.87	\$1,102.38
1948	2,348.28	
1949	722.40	
 Totals	 \$24,228.55	 \$1,102.38

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated February 7, 1951, and to your protest dated August 22, 1951.

The 6% penalty for the substantial underestimation of estimated tax has been asserted for the taxable year ended December 31, 1945, in accordance with the provisions of Section 294(d)(2) of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Robert T. Jacob, 917 Public Service Building, Portland 4, Oregon, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net loss as disclosed by return, Form 1040..... \$(2,070.58)

Unallowable deductions and additional income:

(a) Dividends (Oregon Motor Stages).. \$43,750.00

(b) Additional distribution (Oregon

Motor Stages) ..... 1,038.10

(c) Capital gains ..... 936.67 45,724.77

Total ..... \$43,654.19

Non-taxable income and additional deductions:

(d) Interest ..... \$ 934.93

Net income as adjusted..... \$42,719.26

### Explanation of Adjustments

(a) The records of this office show that prior to July 2, 1945, you, E. Royce, B. Royce, Robert T. Jacob and Fred C. Niederkrome negotiated for the purchase of the capital stock of Oregon Motor Stages, Portland, Oregon, an Oregon corporation engaged in the business of bus transportation. The outstanding stock of that corporation then consisted of 750 common shares, with a par value of \$100.00 per share.

As a result of the negotiations referred to above, on or about July 2, 1945, you and your associates purchased shares of Oregon Motor Stages in the number and at the cost shown below:

	Shares	Cost
E. Royce .....	145	\$145,000.00
B. Royce .....	50	50,000.00
Robert T. Jacob.....	100	100,000.00
Fred C. Niederkrome.....	55	55,000.00
A. L. Schneider.....	50	50,000.00
 Total .....	 400	 \$400,000.00

In accordance with the plan adopted, the remaining 350 shares of Oregon Motor Stages stock were acquired in the name of L. R. Bentson, 411 E. 15th Street, North Vancouver, B. C., an uncle of B. Royce and E. Royce, in consideration of payment of \$350,000.00 cash. Such payment was made from the proceeds of a loan obtained by E. Royce acting for you, himself and your above-named associates, through the Portland Branch of the American Business Credit Corporation, New York City, on a 90-day note which was signed by E. Royce and

L. R. Bentson, and which was collateralized by deposit of the entire 750 shares of stock of Oregon Motor Stages.

On or about September 6, 1945, pursuant to the plan adopted by you and your associates, as aforesaid, Oregon Motor Stages acquired the 350 shares of its own stock then standing in the name of L. R. Bentson and issued its check to him in the sum of \$350,000.00. This check was immediately endorsed and delivered to the American Business Credit Corporation in satisfaction of the 90-day note signed by E. Royce and L. R. Bentson.

It has been determined that it was not intended that L. R. Bentson should acquire, nor did he at any time acquire, any bona fide or actual beneficial interest in the stock of Oregon Motor Stages.

It has been further determined that the accumulated earnings and profits of Oregon Motor Stages available for distribution as dividends during the year 1945 were in excess of \$350,000.00.

This office holds that the transaction whereby Oregon Motor Stages acquired 350 shares of its capital stock, which were issued in the name of L. R. Bentson, for the sum of \$350,000.00, was consummated at such a time and in such a manner as to result in the realization of taxable income to you in the amount of \$43,750.00, such sum being that portion of the total sum of \$350,000.00 which 50 shares of stock of Oregon Motor Stages owned by you bears to the total of 400 shares of such stock owned by you, E. Royce, B. Royce, Robert T. Jacob and Fred C. Niederkrome.

(b) It has been further determined that in connection with the transaction whereby Oregon Motor Stages acquired 350 shares of its stock in the manner stated above, that corporation paid interest to the American Business Credit Corporation and attorney fees in the respective total amounts of \$8,054.80 and \$2,135.41. With respect to these sums, this office holds that to the extent of \$1,006.85 and \$31.25, respectively, payment of interest and attorney fees was in satisfaction of your personal liability incurred in connection with the transaction whereby you acquired the stock of Oregon Motor Stages. Your reported income has, therefore, been increased by \$1,038.10.

(c) In your return filed for the calendar year 1945, you claimed the cost of 800 shares of Missouri Pacific stock and 2100 shares of Chicago, Rock Island and Pacific stock, in the respective amounts of \$400.00 and \$1,050.00, as a loss from worthless stock. It has been determined that this stock did not become worthless in the calendar year 1945 and that it was sold and a gain reported from such sale in the income tax return filed by Albert L. Schneider for the year 1946. It has been further determined that in the calendar year 1945, you had a net short-term capital gain from the sale or exchange of capital assets in the amount of \$405.99, rather than a net capital loss of \$530.68 as reported in your return. Your net income has, therefore, been increased by the amount of \$936.67.

(d) It has been determined that of the amount of \$1,038.10, held under item (b) above to be tax-

able to you, the sum of \$934.93 is allowable as a deduction for interest paid in 1945.

Computation of Income Tax

Net income adjusted.....	\$42,719.26
Less: Normal tax exemption.....	500.00
Balance subject to normal tax.....	\$42,219.26
Normal tax 3% of \$42,219.26.....	1,266.58
Net income adjusted.....	\$42,719.26
Less: Surtax exemptions.....	2,500.00
Balance subject to surtax.....	\$40,219.26
Surtax .....	\$19,891.29
Income tax liability.....	\$21,157.87
Income tax liability disclosed by return, Account No. 7900027.....	None
Deficiency in income tax.....	\$21,157.87
Penalty, Section 294(d)(2) Internal Revenue Code	
Income tax liability adjusted.....	\$21,157.87
Less: Withholding tax ..... \$ 912.00	
Paid on estimated declaration..... 1,872.95 2,784.95	
Difference .....	\$18,372.92
Penalty (6% of \$18,372.92).....	\$ 1,102.38

Taxable Year Ended December 31, 1948

Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$ 8,637.29
Unallowable deductions and additional income:	
(a) Capital gains .....	\$ 700.00
(b) Other income .....	9,182.40 9,882.40
Net income adjusted.....	\$18,519.69

Explanation of Adjustments

- (a) In your return filed for the calendar year

1948, you reported a long-term capital gain from the sale of Bus Sales Agency stock in the amount of \$1,000.00, of which 50% or \$500.00 was taken into account under the provisions of Section 117(b) of the Internal Revenue Code. It has been determined that the sales price of such stock was \$4,000.00, that the cost basis was in the amount of \$2,000.00 rather than \$3,000.00 as reported, and that you realized a gain from the sale in the amount of \$2,000.00, of which 50% or \$1,000.00 is taken into account. Your reported gain from such sale has accordingly been increased by the amount of \$500.00.

It has been further determined that the commission of \$200.00 paid in the year 1948 upon the sale of an airplane in 1947 and claimed as a short-term capital loss in your return filed for the calendar year 1948 is unallowable, such commission having been claimed as a deduction in computing the loss from the sale of such airplane, which was reported in the return filed by Albert L. Schneider for the calendar year 1947.

Your reported net capital gains have accordingly been increased by the amount of \$700.00.

(b) The records of this office show that during the calendar year 1948 you received 91,824 shares of the common stock of Alder Gold-Copper Company, having a fair market value of \$.10 per share, as compensation for services rendered by Albert L. Schneider. In your return filed for the calendar year 1948, you reported no income from this source.

It is held that the receipt of such stock constitutes taxable income to you, and your reported net income for the calendar year 1948 is therefore increased by the amount of \$9,182.40.

#### Computation of Income Tax

Net income adjusted.....	\$18,519.69
Less: Exemptions (4x\$600.00).....	2,400.00
Income subject to tentative tax.....	\$16,119.69
One-half of such income if joint return.....	8,059.85
Tentative tax .....	\$ 1,980.35
Tax reduction: \$400.00 @ 17%.....	\$ 68.00
\$1,580.35 @ 12%.....	189.64      257.64
Combined normal tax and surtax.....	\$ 1,722.71
Income tax liability—\$1,722.71x2.....	3,445.42
Income tax liability disclosed by return, Account No. 300510.....	1,097.14
Deficiency in income tax.....	\$ 2,348.28

#### Taxable Year Ended December 31, 1949

##### Adjustments to Net Income

Net income as disclosed by return.....	\$26,536.81
Unallowable deductions and additional income:	
(a) Other income .....	1,909.13
Net income adjusted.....	\$28,445.94

#### Explanation of Adjustments

- (a) The records of this office show that during the calendar year 1949, you received 19558 shares of the common stock of the Alder Gold-Copper Company, having a fair market value of \$0.97614 per share, as compensation for services rendered by Albert L. Schneider. In your return for the calen-

dar year 1949 you reported no income from this source. It is held that the receipt of such stock constitutes taxable income to you, and your reported net income for the calendar year 1949 is therefore increased by the amount of \$1,909.13.

Computation of Income Tax

Net income adjusted.....	\$28,445.94
Less: Exemptions (4x600.00).....	2,400.00
Income subject to tentative tax.....	\$26,045.94
One-half of such income if joint return.....	13,022.97
Tentative tax .....	\$ 3,839.88
Tax reduction: \$400.00 @ 17%.....	\$ 68.00
\$3,439.88 @ 12%.....	412.79
.....	480.79
Combined normal tax and surtax.....	\$ 3,359.09
Income tax liability—\$3,359.09x2 .....	6,718.18
Income tax liability disclosed by return,	
Account No. 32719102.....	5,995.78
Deficiency in income tax.....	\$ 722.40

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

---

[Title of Tax Court and Docket No. 51533.]

ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph I of the petition.
2. Admits the allegations contained in paragraph II of the petition.

It is held that the receipt of such stock constitutes taxable income to you, and your reported net income for the calendar year 1948 is therefore increased by the amount of \$9,182.40.

#### Computation of Income Tax

Net income adjusted.....	\$18,519.69
Less: Exemptions (4x\$600.00).....	2,400.00
Income subject to tentative tax.....	\$16,119.69
One-half of such income if joint return.....	8,059.85
Tentative tax .....	\$ 1,980.35
Tax reduction: \$400.00 @ 17%.....	\$ 68.00
\$1,580.35 @ 12%.....	189.64
	257.64
Combined normal tax and surtax.....	\$ 1,722.71
Income tax liability—\$1,722.71x2.....	3,445.42
Income tax liability disclosed by return,	
Account No. 300510.....	1,097.14
Deficiency in income tax.....	\$ 2,348.28

#### Taxable Year Ended December 31, 1949

##### Adjustments to Net Income

Net income as disclosed by return.....	\$26,536.81
Unallowable deductions and additional income:	
(a) Other income .....	1,909.13
Net income adjusted.....	\$28,445.94

#### Explanation of Adjustments

- (a) The records of this office show that during the calendar year 1949, you received 19558 shares of the common stock of the Alder Gold-Copper Company, having a fair market value of \$0.97614 per share, as compensation for services rendered by Albert L. Schneider. In your return for the calen-

dar year 1949 you reported no income from this source. It is held that the receipt of such stock constitutes taxable income to you, and your reported net income for the calendar year 1949 is therefore increased by the amount of \$1,909.13.

Computation of Income Tax

Net income adjusted.....	\$28,445.94
Less: Exemptions (4x600.00).....	2,400.00
Income subject to tentative tax.....	\$26,045.94
One-half of such income if joint return.....	13,022.97
Tentative tax .....	\$ 3,839.88
Tax reduction: \$400.00 @ 17%.....	\$ 68.00
\$3,439.88 @ 12%.....	412.79
Combined normal tax and surtax.....	\$ 3,359.09
Income tax liability—\$3,359.09x2 .....	6,718.18
Income tax liability disclosed by return,	
Account No. 32719102.....	5,995.78
Deficiency in income tax.....	\$ 722.40

[Endorsed]: T.C.U.S. Filed Dec. 21, 1953.

---

[Title of Tax Court and Docket No. 51533.]

ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph I of the petition.
2. Admits the allegations contained in paragraph II of the petition.

3. Admits the allegations contained in paragraph III of the petition.

4. Denies that he erred in his determination of the deficiencies in income tax and penalty as shown by the notice of deficiency from which the appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV of the petition.

5. (a) Admits the allegations contained in paragraph V(a) of the petition, except that it is denied that the petitioners are entitled to credit for three additional dependents.

(b) Admits the allegations contained in the first two sentences of paragraph V(b) of the petition. Denies the remaining allegations contained in paragraph V(b) of the petition. Alleges that the nature of the stock transaction including the acquisition, payment and disposition of the remaining 350 shares of Oregon Motor Stages stock was as explained on pages 2 and 3 of Exhibit A attached to the petition on file in this proceeding.

(c), (d), (e) and (f) Denies the allegations contained in paragraph V(c), (d), (e) and (f) of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioners' appeal be denied and that the Commissioner's deter-

mination of the deficiencies and penalty be approved.

/s/ DANIEL A. TAYLOR, WHP  
Chief Counsel, Internal Revenue  
Service.

Of Counsel: Wilford H. Payne, Associate Appellate  
Counsel, John D. Picco, Special Attorney, In-  
ternal Revenue Service.

[Endorsed]: T.C.U.S. Filed Feb. 23, 1954.

---

[Title of Tax Court and Docket Nos. 51491, 51526-  
29, 51531, 51533.]

#### STIPULATION

It Is Hereby Stipulated and Agreed by and be-  
tween the parties above named, appearing and act-  
ing by and through their respective counsel of rec-  
ord, as follows:

\* \* \* \* \*

11. In order to finance the purchase of the 350 shares transferred to L. R. Bentson, a loan applica-  
tion for that amount of money was made to Ameri-  
can Business Credit Corporation, an Oregon cor-  
poration, which corporation submitted it to its par-  
ent company, American Business Credit Corpora-  
tion, a Delaware corporation, for approval. Exhibit  
A, not attached hereto but identified by the initials  
of attorneys, John Picco and Randall S. Jones, is a  
photostat copy of the minutes of a meeting of the  
Executive Committee of the American Business  
Credit Corporation, the Delaware corporation, held  
on June 20, 1945, certified by the treasurer and as-  
sistant secretary of said corporation, as shown in

the certification attached thereto, at which meeting said loan application was considered and acted upon.

12. The said application for a loan of \$350,000.00 was approved by the parent company and the loan was granted by the Portland branch of the American Business Credit Corporation. Exhibit 1 attached hereto is the note dated July 2, 1945, given in consideration for said loan.

13. The petitioners, Niederkrome, E. Royce, B. Royce, Jacob and Schneider, each permitted the shares of Oregon Motor Stages they had purchased to be used as collateral for said loan of \$350,000.00. Exhibits 2, 3, 4, 5 and 6 are receipts signed by L. R. Bentson for the certificates representing the shares of said petitioners.

14. Exhibit B attached hereto is a photostat copy of the check dated July 2, 1945, made payable to L. R. Bentson and E. Royce, written by American Business Credit Corporation for \$350,000.00 by which said loan was made, which check was used to purchase cashier's checks as per Exhibit 7.

15. Exhibit 7 is an application for cashier's checks purchased by L. R. Bentson, and Exhibit 8 is an application for cashier's checks purchased by petitioners, E. Royce, B. Royce, Niederkrome and Jacob.

\* \* \* \* \*

18. Pursuant to the resolution last mentioned the corporation purchased and retired said 350 shares of capital stock, and issued its check dated September 6, 1945, payable to L. R. Bentson, for \$350,000.00. This check was endorsed by L. R. Bentson

and delivered to American Business Credit Corporation in payment of its above-mentioned loan in said amount. Attached hereto, marked Exhibit 10, is a photostatic copy of said check.

\* \* \* \* \*

22. On or about June 20, 1946 the petitioner Niederkrome sold and transferred his stock in the corporation to the petitioner Schneider, because the Interstate Commerce Commission took the position that he could not be on the boards of two interstate carriers and that he should give up his interest in Oregon Motor Stages.

23. A special meeting of the Board of Directors of the corporation was held in Portland, Oregon, on July 9, 1946. Except for formal beginning and ending, the following is a copy of the minutes of said meeting:

"The following Directors were present: E. Royce, F. C. Niederkrome and Robt. T. Jacob.

The meeting was called to order by the President who stated that it had been called for the purpose of acting upon the resignation of F. C. Niederkrome as Director and Treasurer. Mr. Niederkrome advised that he had disposed of his stock in the company to Mr. A. L. Schneider, and that he was submitting his resignation in writing, which resignation was dated June 20, 1946. After a discussion of the matter, upon motion duly made and seconded, the resignation of Mr. Niederkrome as Director and Treasurer of the company was accepted and ordered filed of record.

The chair then announced that nominations for a

new Director were in order. Upon motion duly made and seconded, A. L. Schneider was thereupon elected as Director to serve until the next annual meeting or until his successor is appointed."

24. The petitioner Niederkrome has not been a stockholder, officer or director of the corporation since June 20, 1946. From the time the petitioners, E. Royce, B. Royce, Jacob and Schneider acquired their stock to the present time, they have continued to be stockholders of the corporation, and for several years beginning July 2, 1945, E. Royce and Jacob were officers and directors of the corporation. The petitioner, B. Royce, has never been either an officer or director of the corporation. Schneider was an officer and/or director for several years beginning March 11, 1946.

25. On July 19, 1945 Oregon Motor Stages issued its check, No. 7-60, in the amount of \$4,315.07 which is made payable to George W. Davidson, the then Vice-President and General Manager of the American Business Credit Corporation, Portland. George W. Davidson is now deceased. The amount of \$4,315.07 was charged on the books of the corporation to account No. 4620 and represented the finance servicing fee charged by Davidson on the aforesaid loan of \$350,000.00. Attached hereto as Exhibit C is an invoice dated July 17, 1945 relating to said finance servicing fee. On September 17, 1945 Oregon Motor Stages issued its check in the amount of \$3,739.73 which was made payable to the American Business Credit Corporation, Portland, for interest due and owing on the aforesaid loan of \$350,-

000.00. Attached hereto as Exhibits D and E are photostat copies of page 549 (dated July 20, 1945) and page 595 (dated September 17, 1945) of the cash receipts report of the American Business Credit Corporation showing the receipt by that corporation of the amounts of \$4,315.07 and \$3,739.73. Also attached hereto as Exhibits F and G are the bank statement of American Business Credit Corporation (in account with the U. S. National Bank for the month of September 1945) and an account entitled "Royce and Benton" on the ledger sheet of American Business Credit Corporation reflecting the entries relating to the aforesaid loan of \$350,000.00, and the payment of said loan together with the interest and finance servicing fee.

\* \* \* \* \*

## EXHIBITS

All the exhibits herein mentioned, except Exhibit A, may be offered and received in evidence at the trial of the above entitled cases without further identification or authentication; subject, however, to such objections as counsel makes thereto at the trial on the ground of competency, relevancy, or materiality. All said exhibits (except Exhibit A) shall be considered as having been offered and received in evidence in these cases unless objection is made thereto and the objection is sustained.

Exhibit A is not attached hereto. Said exhibit may be offered in evidence at the trial of the above entitled cases without further identification or authentication, subject, however, to any and all other

objections as counsel may make thereto at the trial of said cases.

#### Additional Evidence

Each of the parties hereto reserves the right to supplement the facts herein set forth with evidence at the trial.

/s/ RANDALL S. JONES,  
Counsel for Petitioners.

/s/ JOHN P. BARNES,  
Chief Counsel, Internal Revenue Service, Counsel  
for Respondent.

[Endorsed]: T.C.U.S. Filed May 14, 1955.

---

[Title of Tax Court and Docket Nos. 51526-7.]

#### SUPPLEMENTAL STIPULATION OF FACTS

The following supplemental stipulation of facts was entered into by and between the parties hereto, by their respective attorneys of record, on May 20, 1955, in lieu of a deposition which originally was to be taken pursuant to permission granted by Judge Ernest H. VanFossan of The Tax Court of the United States on May 16, 1955 in Portland, Oregon at the conclusion of the hearing of Ezra Royce, et al vs. Commissioner of Internal Revenue, Docket Nos. 51491, 51526, 51527, 51528, 51529, 51531 and 51533. The facts stipulated below are true and the same may be so considered and accepted by the Court as offered in evidence by the parties:

1. Copy of agreement executed January 11, 1947

by the petitioner E. Royce and certain individuals, namely, Roy K. Magney and Harvey F. Stone, is attached hereto and made a part hereof as Exhibit 45-SSSS.

2. Copy of escrow agreement executed March 18, 1947 by the petitioner E. Royce, Harvey F. Stone and Roy K. Magney is attached hereto and made a part hereof as Exhibit 46-TTTT.

3. Copy of statement of receipt and distribution of common stock of Alder Gold-Copper Company by E. Royce, trustee, certified to by Roy K. Magney, secretary of Alder Gold-Copper Company, is attached hereto and made a part hereof as Exhibit 47-UUUU.

4. No shares of the common stock of Alder Gold-Copper Company were received by the petitioner E. Royce during 1947 and 1948, and the petitioner E. Royce realized no income in respect thereof in said years.

5. In 1949 the petitioner E. Royce received 134,-148 shares of the common stock of Alder Gold-Copper Company as compensation for services rendered in connection with the agreements attached hereto as Exhibits 45-SSSS and 46-TTTT. The shares of common stock of Alder Gold-Copper Company received by the petitioner E. Royce in 1949 had a fair market value in that year of \$0.07½ per share or a total value of \$10,061.10. The receipt of this stock by the petitioner E. Royce constituted taxable income to him in 1949 and is to be included by him as ordinary income for that year.

6. The petition filed in Docket No. 51526 may

be amended in such manner as may be necessary to conform to the proof in the light of this supplemental stipulation of facts.

/s/ RANDALL S. JONES,  
Attorney for Petitioners.

/s/ JOHN POTTS BARNES,  
Chief Counsel, Internal Revenue Service, Attorney  
for Respondent.

[Endorsed]: T.C.U.S. Filed June 1, 1955.

---

T. C. Memo. 1956-255

Tax Court of the United States

Fred C. Niederkrome, et al.,\* Petitioners, vs. Commissioner of Internal Revenue, Respondent.

Docket Nos. 51491, 51526, 51527, 51528, 51529, 51531, 51533. Filed November 16, 1956.

MEMORANDUM FINDINGS OF FACT AND  
OPINION

1. Held, L. R. Bentson was not a bona fide participant in the transactions leading up to the acquisition by petitioners of the stock of Oregon Motor Stages and was not a bona fide stockholder in such

---

\* Proceedings of the following petitioners are consolidated herewith: E. Royce and Dora F. Royce, Docket No. 51526; Ezra Royce, Docket No. 51527; B. Royce, Docket No. 51528; Estate of Isabelle H. Royce, Deceased, B. Royce, Executor, Docket No. 51529; Robert T. Jacob and Agnes C. Jacob, Docket No. 51531; and Albert L. Schneider and Bertha Schneider, Docket No. 51533.

company. Held, further, for failure of proof of error, respondent's determination that the corporate distributions by Oregon Motor Stages, in retirement of 350 shares of its stock issued in the name of L. R. Bentson and in payment of certain incidental expenses, were made at a time or under such circumstances as to be essentially equivalent to dividends taxable to petitioners, is approved.

2. Payments by Burnside Realty, Inc., during the years 1944 through 1949, under a certain lease agreement with option to purchase held not to constitute taxable income to E. Royce.

3. Held, the sum of \$20,000 withdrawn by E. Royce in 1945 from Hippodrome Amusement Company was not received by him as a loan.

4. Held, Dora F. Royce was not a bona fide partner, for tax purposes, of the Yellow Cab Company of Portland during the years 1944 through 1947 and of the Yellow Cab Company of Seattle during the years 1945 through 1947.

5. Held, Eunice M. Royce, or the trust of which she was beneficiary, was not, during the years involved, a bona fide partner in the Yellow Cab Company of Seattle.

6. Held, the sales in 1947 by the Yellow Cab Company of Portland of used taxicabs were understated in the amount of \$4,525.

Randall S. Jones, Esq., for the petitioners.

John D. Picco, Esq., for the respondent.

Van Fossan, Judge: Respondent determined deficiencies in income tax of the petitioners for years and in amounts as follows:

Year	Addition to Tax under		
	Deficiency	Sec. 294(d)(2)	Sec. 293(b)
Fred C. Niederkrome, Docket No. 51491			
1945	\$ 32,348.48		\$ 1,940.07
E. Royce and Dora F. Royce, Docket No. 51526			
1948	\$ 73,966.90		
1949		35,145.26	
Ezra Royce, Docket No. 51527			
1944	\$ 74,286.82		
1945	495,661.69		\$31,467.14
1946	143,714.83		
1947	112,261.13	7,011.97	\$56,130.57
B. Royce, Docket No. 51528			
1945	\$ 20,399.28		\$ 2,005.84
1947		8,421.34	
Estate of Isabelle H. Royce, Deceased, B. Royce, Executor, Docket No. 51529			
1945	\$ 31,913.80		\$ 2,588.89
1946	11,485.22		
1947	8,421.36		
Robert T. Jacob and Agnes C. Jacob, Docket No. 51531			
1945	\$ 66,977.56		\$ 4,035.66
Albert L. Schneider and Bertha Schneider, Docket No. 51533			
1945	\$ 21,157.87		\$ 1,102.38
1948	2,348.28		
1949		722.40	

Three additional dockets initially involved in these proceedings have been settled by stipulations of the parties and decisions entered in accordance with such stipulations. The applicability of the additions to tax determined by respondent under section 294(d)(2), Internal Revenue Code of 1939, for substantial underestimation of tax is now conceded by the respective petitioners involved. Respondent abandons his determination of the so-

called fraud penalty for the year 1947 in Docket No. 51527 and concedes the inapplicability thereof to the petitioner therein. Various other issues raised in the pleadings have also been settled by stipulation and adjustments resulting therefrom will be reflected in the Rule 50 recomputations consequent herein.

Six issues remaining and submitted to the Court for decision are:

(1) Whether the disbursements by Oregon Motor Stages in 1945 from its surplus account, in retirement of 350 shares of its stock and in payment of certain incidental expenses, under circumstances here present, constituted distributions essentially equivalent to taxable dividends, within the scope of section 115(g), Internal Revenue Code of 1939, taxable to petitioners in Docket Nos. 51491, 51527, 51528, 51529, 51531 and 51533, or, in the alternative, to the petitioner in Docket No. 51527;

(2) Whether certain payments made by Burnside Realty, Inc., during the years 1944 to 1949, inclusive, constituted taxable income to petitioner in Docket No. 51527;

(3) Whether the disbursement of \$20,000 on December 28, 1945, from the Hippodrome Amusement Company was received by petitioner in Docket No. 51527 as a dividend or as a loan;

(4) Whether, during the years 1944 through 1947, the co-petitioner in Docket No. 51526, Dora F. Royce, was, for tax purposes, a bona fide member of the partnerships doing business as Yellow Cab Company of Portland and Yellow Cab Company of Seattle;

(5) Whether the minor daughter of petitioners in Docket No. 51526 and petitioner in Docket No. 51527, or the trust of which she was beneficiary, was, during the years 1945 through 1949, a bona fide member for tax purposes of the partnership doing business as Yellow Cab Company of Seattle;

(6) Whether the Yellow Cab Company of Portland, a partnership, understated its reported sales of used taxicabs for the year 1947, and, if so, the amount thereof.

#### General Findings of Fact

All stipulations of fact filed herein by the parties are adopted and, by this reference, made a part hereof.

The petitioner in Docket No. 51491 is Fred C. Niederkrome, who, during the taxable year 1945, was a resident of Portland, Oregon.

The petitioners in Docket No. 51526 are Ezra Royce and his wife, Dora F. Royce, who, during the years 1944 through 1949, resided in Portland, Oregon. Ezra Royce, sometimes called Roy Royce and who will hereinafter be referred to as E. Royce, is also the petitioner in Docket No. 51527.

B. Royce, who, during the years 1945 through 1947, was resident in Vancouver, Washington, is the petitioner in Docket No. 51528, and the estate of his deceased wife, Isabelle H. Royce, is the petitioner in Docket No. 51529.

The petitioners in Docket No. 51531 are Robert T. and Agnes C. Jacob, husband and wife, who, during 1945, the year involved therein, were residents of Portland, Oregon.

Albert L. Schneider and his wife, Bertha Schneider, are the petitioners in Docket No. 51533. During 1945, 1948 and 1949, the taxable years involved therein, Albert and Bertha resided in Clackamas County, Oregon.

For the years respectively involved in the aforementioned proceedings, all petitioners filed their individual or joint returns on a cash receipts and disbursements method of accounting and on a calendar year basis. In each case, such returns were filed with the then collector of internal revenue for the district of Oregon at Portland, except those returns involved in Dockets numbered 51528 and 51529, which returns were filed with the then collector of internal revenue for the district of Washington at Tacoma.

### Issue 1.

#### Findings of Fact

The Oregon Motor Stages (hereinafter called Stages) was organized as an Oregon corporation in 1931, and in 1945 was the largest intrastate bus company operating in Oregon. Stages operated its motor busses as a public carrier pursuant to a permanent franchise under the rules and regulations of the Interstate Commerce Commission. In June, 1945, the issued and outstanding capital stock of Stages consisted of 750 shares of common stock owned as follows:

250 shares by L. D. Jones

250 shares by T. D. Wilson

250 shares by R. W. Lemon or members  
of his family.

During April or May, 1945, Schneider, after contacting the stockholders of Stages, advised E. Royce that the stock of the corporation was for sale. Promptly thereafter, E. Royce and Jacob entered into discussions with various individuals and the stockholders in regard to the purchase of the stock based upon a price of \$1,000 per share. As a result of the negotiations, they and B. Royce, Niederkrome and Jacob expressed a willingness to purchase a total of 400 shares. Negotiations were conducted with other individuals concerning the purchase of the remaining 350 shares of the stock. They were financially able to acquire the shares but declined to participate in the venture. Consideration of giving Stages an option to purchase the 350 shares developed at that time to the point of drafting an agreement for that purpose. During the middle or latter part of June, 1945, L. R. Bentson visited Portland and was consulted about the venture.

Bentson, born in 1869, was an American citizen and resided in Canada after 1906. He was an uncle of E. Royce, B. Royce and Fannie Orsen, whom he visited about once a year during a stay of 4 or 5 days in Portland.

Bentson was not a man of expensive habits or a lavish spender. He and his wife lived modestly in a small house in Vancouver, B.C., which was valued at \$4,200 at the time of his death in April, 1950. He left an estate of \$33,673.06 to Fannie Orsen. He owned a house and garage in Vancouver, which he rented in 1945 for \$20 and \$12 per month,

respectively. Bentson invested small amounts of money in Canadian securities and made regular small deposits to his bank account, which, on August 14, 1945, aggregated \$6,539.42. What funds he had were said to be blocked by wartime restrictions in Canada.

Prior to June 20, 1945, application for loan of \$350,000 was made by E. Royce to American Business Credit Corporation, an Oregon corporation doing business in Portland, Oregon, (hereinafter sometimes called ABC-Portland). The application was duly submitted to the parent company, American Business Credit Corporation (hereinafter sometimes referred to as ABC-Delaware), a Delaware corporation, at its offices in New York City, for approval. ABC-Portland was dissolved or abandoned about 1949 and its records transferred to the main office of the parent company in New York. The application for loan of \$350,000 was considered by the Executive Committee of the parent company on June 20, 1945, the pertinent portion of the minutes of which committee reads as follows:

Mr. Davidson and Mr. Ebe then submitted an application on behalf of ABC-Portland. A group of outstanding individuals in Portland, headed by Messrs. Barney & Roy Royce and Robert Jacob, desire to purchase the entire capital stock of Oregon Motor Stages, largest intra-state bus company operating in Oregon. Capital stock consists in all of 750 shares Common, par value \$100.00 per share, book value \$537.00 per share. The stock is to be acquired for a price of \$750,000. The purchasers

intend to buy 400 shares for \$400,000, with their own funds. They ask that we extend a line of credit of \$350,000, the balance of the purchase price of the Oregon Motor Stages stock. We are asked to lend Mr. Roy Royce, personally, the sum of \$350,000, on his note, to be secured by all of the capital stock of Oregon Motor Stages. Our loan to be repaid in 90 days or adjusted as conditions warrant. Mr. R. Royce's personal statement reflects a net worth of \$1,366,000.00. Retiring stockholders will guarantee to R. Royce and his associates that the worth of Oregon Motor Stages is not less than the figure shown on the company's 4/30/45 statement. A fee of \$5,000 plus 5% per annum on cash for every 90 days is charge contemplated.

The Committee reviewed in detail the financial condition of Oregon Motor Stages as of 12/30/44 and 4/30/45 and its operating results for 1944. Mr. Davidson was questioned in respect to the proposed transaction and Mr. Dick's opinion was received. After consideration and full review, the Committee unanimously approved the credit line requested, subject to approval of counsel, and the following [sic] stipulations:

1. Subject to unanimous approval of full Portland Committee.

The sale and purchase of the 750 shares of capital stock of Stages was consummated on July 2, 1945, at which time the former shareholders transferred 750 shares of stock in such manner that each of the petitioners next named and L. R. Bentson re-

ceived certificates for the number of shares indicated after their respective names:

Niederkrome .....	55
E. Royce .....	145
B. Royce .....	50
Robert T. Jacob .....	100
A. L. Schneider .....	50
L. R. Bentson .....	350
<hr/>	
Total .....	750

All of the certificates of stock received by the persons named above were immediately endorsed in blank and turned over to a representative of ABC to secure the loan from that company of \$350,000, Bentson giving his receipt to each of the others for their respective stock certificates, "such stock being loaned to me to be pledged to American Business Credit Corporation as collateral to loan this day made to me for the purchase of Three Hundred Fifty (350) shares of the common capital stock of said company." On the same date, July 2, 1945, ABC issued its check for \$350,000 payable to L. R. Bentson and E. Royce. The payees in turn executed a note dated July 2, 1945, in the amount of \$350,000, secured by all of the capital stock of Stages, and reading as follows:

\$350,000.00                      Portland, Oregon, July 2, 1945.

On or before ninety (90) days after date, for value received, we, jointly and severally, promise to pay to the order of American Business Credit Corporation Three Hundred Fifty Thousand and

no/100 (\$350,000.00) Dollars, with interest from date hereof, payable monthly on the first day of each month hereafter, at the rate of 5 per cent per annum. Principal and interest payable in lawful money of the United States of America at the office of American Business Credit Corporation, Pacific Building, Portland, Oregon; and as collateral security for the payment of this note we, jointly and severally, herewith deposit and pledge with said American Business Credit Corporation 750 shares of the capital stock of Oregon Motor Stages, an Oregon corporation, evidenced by the following certificates: certificate 72 for 145 shares; certificate 73 for 100 shares; certificate 74 for 55 shares; certificate 75 for 50 shares; certificate 76 for 50 shares and certificate 77 for 350 shares; and we, jointly and severally, empower said American Business Credit Corporation, with option as to time and manner, to collect or sell and deliver all or any part of said capital stock and the certificates evidencing the same, with or without notice to us, or either of us, and to apply the proceeds thereof to the payment of this note with all interest due thereon, and to the payment of all expenses attending the sale or protesting of the said collateral; and in case the proceeds of the sale of said collateral shall not cover the principal, interest and expenses we, jointly and severally, promise to pay the deficiency forthwith after such sale; and in case suit or action is commenced to collect this note or any portion thereof, we, jointly and severally, promise to pay such additional sum as the court may ad-

judge reasonable as attorney's fees in any such suit or action.

/s/ L. R. Bentson

/s/ E. Royce

On July 17, 1945, George W. Davidson, manager of ABC-Portland, billed Stages for \$4,315.07, an amount which represented the ABC servicing fee for financing the loan, the invoice reading as follows:

Portland, Oregon, July 17, 1945

Oregon Motor Stages

506 S.W. Mill Street

Portland, Oregon

In account with

Geo. W. Davidson

Pacific Bldg.

To services rendered

Fee ..... \$4,315.07

Approved for Voucher      July

Charge to      4620

Credit to

Approved for Payment

O.K.

/s/ E. Royce

On July 19, 1945, Stages issued its check, No. 7-60, in the amount of \$4,315.07, payable to George W. Davidson of ABC, in payment of the above invoice. The payment was charged to account No. 4620, an expense account, on the books of Stages.

Two months later, on or about August 31, 1945, Stages received a letter dated August 31, 1945, signed by L. R. Bentson, reading as follows:

Vancouver, B. C.

August 31, 1945

Oregon Motor Stages,  
Portland, Oregon

Gentlemen:

I hereby offer to sell to Oregon Motor Stages my Three Hundred Fifty (350) shares of stock in the Company for cash at the price of One Thousand Dollars (\$1,000.00) per share, total price Three Hundred Fifty Thousand Dollars (\$350,000.00). You are to have thirty days in which to close the transaction, but it is understood between us that you will make every reasonable effort to do so within a lesser time.

I represent and warrant that my 350 shares of stock are free and clear of encumbrances, save and except for a note in the sum of \$350,000.00 payable to the American Business Credit Corporation and the transfer will be made upon the sole condition that your Company assume and pay the amount of interest that is due and owing from me to said corporation on account of this note.

My object in desiring to dispose of this stock is that the sudden end of the war has made a great difference in my plans, and on this account I desire to be relieved of my obligation to the said American Business Credit Corporation.

Very truly yours,

/s/ L. R. Bentson

August 31, 1945.

The above offer is hereby accepted.

Oregon Motor Stages

/s/ By E. Royce,  
President.

In drafting the foregoing letter, the place of the addressor in the letterhead was first typed in as "Vancouver, Washington," then the word "Washington" was erased and "B.C." substituted in its place.

A joint and special meeting of the stockholders and directors of Stages was held on September 5, 1945, at which time such letter was considered. Bentson was one of the stockholders present at the meeting, the minutes of which meeting read in part as follows:

The President, E. Royce, presided and Secretary Robert T. Jacob kept a record of the proceedings.

Consideration was then given to the written offer of stockholder, L. R. Bentson, dated August 31, 1945, copy of which is attached to these minutes.

The president then canvassed each and every stockholder present, either in person or by proxy, and each and every share of stock present, either in person or by proxy, except the 350 shares owned by stockholder, L. R. Bentson, expressly waived the right to sell their shares to the corporation.

Thereupon consideration was given to the applicable Oregon statutes and the balance sheet of the Company as at August 31, 1945 which the President submitted to the meeting was inspected, and thereupon the following resolutions were adopted by the unanimous vote of 400 shares of stock of the

Company, stockholder L. R. Bentson, at his request, being excused from voting:

Whereas, express power is given in the Articles of Incorporation of this Company to purchase its own stock; and

Whereas, this Company has a surplus substantially exceeding \$350,000.00, and it is to the best interests of the Company to use \$350,000.00 of such surplus to retire 350 shares of its issued and outstanding capital stock at a price of \$1,000.00 per share and to use \$350,000.00 of such surplus for such purpose; and

Whereas, such purchase may be made without injury to the existing creditors and all of the stockholders of the Company, except stockholder L. R. Bentson, have waived their priority and have consented that the 350 shares belonging to L. R. Bentson shall be so purchased and retired; and

Whereas, said stock so purchased should be cancelled and the capital stock of the Company reduced in the amount of \$35,000.00, Now, Therefore,

Be It Resolved: That this Company shall purchase and retire 350 shares of stock belonging to L. R. Bentson at the price of \$1,000.00 per share out of its surplus, and that the stock so purchased shall be cancelled; and

Further Resolved: That the capital stock of this Company be reduced from \$75,000.00, divided into 750 shares of the par value of \$100.00 each, to \$40,000.00 divided into 400 shares at the par value of \$100.00 each, and that the Secretary be and he is hereby instructed and directed to file with the

Corporation Commissioner of Oregon an appropriate certificate and affidavit of such reduction in capital stock, as required by law.

There being no further business to come before the meeting, it was duly adjourned.

On September 6, 1945, Stages purchased and retired 350 shares of capital stock, and on the same date issued its check in the amount of \$350,000, payable to L. R. Bentson. The check was endorsed by Bentson and delivered to ABC-Portland in payment of the loan. The payment of \$350,000 was recorded on the books of Stages as a debit to surplus of \$315,000 and a debit to capital stock of \$35,000. On September 17, 1945, Stages issued its check in the amount of \$3,739.73 to ABC-Portland, for interest due and owing on the loan of \$350,000. This payment was charged to interest expense on the books of Stages. On April 2, 1946, the corporation commissioner of the State of Oregon issued to the corporation its certificate of decrease in the capital stock of the corporation from an authorized capital stock of \$75,000 to an authorized capital stock of \$40,000.

Bentson did his own bookkeeping. In his day book Bentson listed in detail items of income and expense, and purchase and sale of securities. It contained numerous entries on stocks purchased and sold by him during the ensuing years, including the year 1945. It did not contain any entries reflecting the purchase or sale of Stages stock in 1945.

Bentson was neither an officer nor a director of

Stages, and he did not participate in the operation of the corporation. Schneider was general manager, vice president and director, and the only one who was actually active in the company's affairs. Jacob was secretary and director. E. Royce was president and director. Niederkrome was treasurer and director. E. Royce, Jacob and B. Royce paid for their Stages stock out of their own funds. Schneider paid for his 50 shares with his own money, although E. Royce advanced him \$50,000 for the purpose for a few days. E. Royce advanced Niederkrome \$55,000 for his 55 shares, and Niederkrome gave him a note for \$55,000. On June 20, 1946, Niederkrome transferred his 55 shares to Schneider at the same price. Schneider paid several thousand dollars on account of the stock and gave a note to E. Royce for the balance. Niederkrome's unpaid note to E. Royce was cancelled, and Schneider's note remained unpaid until the subsequent liquidation of Stages, when a compensatory offset was made against it as among the stockholders.

During the respondent's investigation, Niederkrome confided to respondent's agents that he thought the corporation had obtained the loan from ABC. When the stock in the name of Bentson was offered for sale to Stages on August 31, 1945, no serious effort was made to interest other purchasers in buying the stock. The availability of the Stock for sale in September of 1945 was communicated by Schneider to one of the individuals formerly interested in buying it and Schneider was informed by this individual that he was no longer interested.

Stages was in good financial condition in 1945 and had a very fine earning record. It had paid substantial dividends in the years prior to 1945. Although its bus equipment was becoming somewhat worn, due to the wartime conditions, it had a large reserve available for the purchase of additional equipment; it was doing an excellent business; its gross earnings were in excess of \$1,000,000 per year, and in two years were in excess of \$2,000,000. The petitioners were optimistic about the post-war future of Stages. It was their opinion that the company would prosper after the war, despite an expected decline in revenues as a result of the loss of military business. They thought that wage rates would be reduced, and the population of Oregon doubled, within the next 10 years. They regarded Stages as a very profitable venture, one which presented an excellent opportunity for a good, solid bus operation. Stages had an earned surplus in excess of \$350,000 at the time of the stock redemption on September 6, 1945.

The balance sheets of Stages as of December 31, 1944, and December 31, 1945, disclosed the following financial condition:

Assets	December 31,	December 31,
	1944	1945
Cash .....	\$ 199,552.11	\$236,426.54
Receivables .....	72,661.57	66,898.37
Inventory .....	13,507.03	20,699.29
Investments (Govt. bonds) .....	546,172.58	755.61
Deferred charges .....	14,514.55	11,413.81
Capital assets (less reserve)..	447,692.55	504,515.50
Other assets .....	136,218.05	73,066.31
 Total Assets .....	 \$1,430,318.44	 \$913,775.43

	December 31, 1944	December 31, 1945
Liabilities		
Payables .....	\$ 227,559.84	\$263,390.42
Accrued expenses .....	655,043.98	416,750.83
Other liabilities .....	1,161.84	91,164.84
	<hr/>	<hr/>
Total Liabilities .....	\$ 883,765.66	\$771,306.09
	<hr/>	<hr/>
Net Worth		
Common stock .....	\$ 100,000.00	\$ 40,000.00
Undivided profits .....	446,552.78	102,469.34
	<hr/>	<hr/>
Total Net Worth .....	\$ 546,552.78	\$142,469.34
	<hr/>	<hr/>

There was no diminution of or curtailment in the corporate activity and business of Stages as a result of the stock redemption. The corporation continued to operate under its permanent franchise under the Interstate Commerce Commission, and it continued to serve the people who desired to use its facilities.

In 1945, Stages expended cash and incurred a long-term obligation of \$90,000 for the purchase of new bus equipment costing \$179,940.71, of which cost \$155,945.71 was expended prior to petitioners' and Bentson's acquisition of Stages stock. In 1945, also, depreciation on Stages' equipment amounted to \$119,564.23, and busses costing \$74,404.12, having a depreciated basis of \$3,877.87, were sold for a net profit of \$18,903.83. In 1946, Stages purchased new bus equipment costing \$183,009.33, and increased its long-term obligations to \$155,000. Depreciation on Stages' equipment in 1946 amounted to \$124,673.58, and busses costing \$148,951.47, and

having a depreciated basis of \$700, were sold for a net profit of \$44,565.81. During 1947, Stages acquired new bus equipment costing \$147,862.99 and a new building costing \$103,390.33; it increased its long-term obligations (equipment) to \$184,934.91; and it incurred a new long-term obligation (building) of \$71,000. Depreciation on Stages' equipment in 1947 amounted to \$138,637.85 and busses costing \$56,722.11, and having a cost basis of \$450, were sold for a profit of \$9,990.24.

The gross revenues and cumulative undivided profits of Stages for the years 1945 to 1948, inclusive, were as follows:

Year	Revenues	Cumulative
		Undivided Profits at End of Year
1945	\$2,387,331.82	\$102,469.34
1946	1,802,712.13	202,356.07
1947	2,072,584.49	236,983.53
1948	1,756,559.03	218,500.09

Stages did not declare or pay dividends to its stockholders in 1945 and 1946, or in any other year under the operation of the petitioners. The taxable net income of Stages for 1945 and 1946 was \$426,885.28 and \$153,318.31, respectively. In answer to Question No. 8 on the income tax return of Stages for the year 1946 concerning the retention of over 70 per cent of the earnings and profits, the following reason was given:

Company is replacing equipment badly worn through the war use and is buying other equipment to better service. Needs all funds for further expansion.

The record fails to overcome the determination of respondent that Bentson was not a bona fide participant in the transactions leading up to the acquisition of Stages stock and was not a bona fide stockholder in Stages at all times material.

The respondent's determination that the corporate distributions by Stages, in retirement of the 350 shares of its stock issued in the name of Bentson and in payment of certain incidental expenses, were made at a time or under such circumstances as to be essentially equivalent to dividends taxable to petitioners, is not overcome by the evidence of record.

### Opinion

The issue presented involves the status of the \$350,000 disbursed by Stages in retirement of the 350 shares of capital stock issued in the name of Bentson and the smaller amounts disbursed to cover the interest and incidental expenses attendant upon the note for \$350,000 signed by Bentson and E. Royce and payable to ABC. That is to say, the question is whether these disbursements are to be considered essentially equivalent to dividends within the meaning of section 115(g) of the 1939 Code<sup>1</sup>

---

<sup>1</sup> Sec. 115. Distribution by Corporations.

\* \* \* \* \*

(g) Redemption of Stock.—If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption

and whether, as determined by respondent, such disbursements are taxable to the petitioners or, in the alternative, taxable solely to E. Royce.

In support of his determination, respondent argues that the petitioners purchased the Stages stock with the funds which they in substance borrowed from ABC, which funds were later repaid with those obtained from Stages; that the indebtedness was incurred by and for the benefit of petitioners and that its payment by the corporation constituted a dividend to them. Respondent would thus ignore the presence of Bentson in the transactions as being no more than a straw man for the petitioners, collectively or, in the alternative, for E. Royce, individually. Respondent invokes the well established concept that the use of corporate income for the personal benefit of the stockholders, as distinguished from benefit to the corporate enterprise, constitutes a taxable dividend to the stockholders so benefited. See *H. F. Wall v. United States*, 164 F. 2d 462; *Holloway v. Commissioner*, 203 F. 2d 566, affirming a Memorandum Opinion of this Court; *Woodworth v. Commissioner*, 218 F. 2d 719, affirming a Memorandum Opinion of this Court. See, also, 1 Mertens, *Law of Federal Taxation*, sec. 9.08, and cases cited therein.

On the other hand, petitioners maintain that Bentson was a bona fide participant in the transactions as they actually transpired and that the

---

or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend.

The record fails to overcome the determination of respondent that Bentson was not a bona fide participant in the transactions leading up to the acquisition of Stages stock and was not a bona fide stockholder in Stages at all times material.

The respondent's determination that the corporate distributions by Stages, in retirement of the 350 shares of its stock issued in the name of Bentson and in payment of certain incidental expenses, were made at a time or under such circumstances as to be essentially equivalent to dividends taxable to petitioners, is not overcome by the evidence of record.

### Opinion

The issue presented involves the status of the \$350,000 disbursed by Stages in retirement of the 350 shares of capital stock issued in the name of Bentson and the smaller amounts disbursed to cover the interest and incidental expenses attendant upon the note for \$350,000 signed by Bentson and E. Royce and payable to ABC. That is to say, the question is whether these disbursements are to be considered essentially equivalent to dividends within the meaning of section 115(g) of the 1939 Code<sup>1</sup>

---

<sup>1</sup> Sec. 115. Distribution by Corporations.

\* \* \* \* \*

(g) Redemption of Stock.—If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption

and whether, as determined by respondent, such disbursements are taxable to the petitioners or, in the alternative, taxable solely to E. Royce.

In support of his determination, respondent argues that the petitioners purchased the Stages stock with the funds which they in substance borrowed from ABC, which funds were later repaid with those obtained from Stages; that the indebtedness was incurred by and for the benefit of petitioners and that its payment by the corporation constituted a dividend to them. Respondent would thus ignore the presence of Bentson in the transactions as being no more than a straw man for the petitioners, collectively or, in the alternative, for E. Royce, individually. Respondent invokes the well established concept that the use of corporate income for the personal benefit of the stockholders, as distinguished from benefit to the corporate enterprise, constitutes a taxable dividend to the stockholders so benefited. See *H. F. Wall v. United States*, 164 F. 2d 462; *Holloway v. Commissioner*, 203 F. 2d 566, affirming a Memorandum Opinion of this Court; *Woodworth v. Commissioner*, 218 F. 2d 719, affirming a Memorandum Opinion of this Court. See, also, 1 Mertens, *Law of Federal Taxation*, sec. 9.08, and cases cited therein.

On the other hand, petitioners maintain that Bentson was a bona fide participant in the transactions as they actually transpired and that the

---

or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend.

redemption of the stock issued in Bentson's name was all that it was represented to be, i.e., a valid redemption or cancellation of all of the stock of one stockholder as is contemplated by the provisions of Regs. 111, sec. 29.115-9, reading in part as follows:

The question whether a distribution in connection with a cancellation or redemption of stock is essentially equivalent to the distribution of a taxable dividend depends upon the circumstances of each case. A cancellation or redemption by a corporation of a portion of its stock pro rata among all the shareholders will generally be considered as effecting a distribution essentially equivalent to a dividend distribution to the extent of the earnings and profits accumulated after February 28, 1913. On the other hand, a cancellation or redemption by a corporation of all of the stock of a particular shareholder, so that the shareholder ceases to be interested in the affairs of the corporation, does not effect a distribution of a taxable dividend. \* \* \*

The so-called "net effect" test, announced in *Flanagan v. Helvering*, 116 F. 2d 937, has been relied upon by certain of the courts to establish taxability as dividends. The motive for the distribution is a factor for consideration in determining whether a legitimate business purpose was the basis for the redemption. *Keefe v. Cote*, 213 F. 2d 651; *Estate of Henry A. Golwynne*, 26 T.C.—(September 28, 1956). The question in the final analysis must

turn on the facts. The respondent having determined that the redemption was within the terms of the applicable statute, the burden of petitioners was to establish error in that conclusion. Careful consideration of all of the evidence fails to convince us that they have met that burden. Reference to some of the reasons for so concluding may be helpful.

The stockholders remaining after the redemption, who, with the representative of B. Royce, are petitioners, had no desire to acquire in excess of 400 of the 750 shares of stock of Stages. A plan was considered to have Stages acquire the remaining 350 shares and a form of agreement was drafted for that purpose. At that point of the negotiations, Bentson, according to testimony of petitioners, became interested in the venture and, after considering the matter, agreed to purchase the shares. The bona fides of his participation in the venture is a basic issue.

Although there is testimony that Bentson made a fortune in gold mining in Alaska, proof is lacking that in July 1945 he had a net worth ample to undertake the purchase of stock of a selling price of \$350,000. Whatever the legal consequences, it is established that his funds were blocked in Canada. The small estate left by him in 1950, at the age of about 80 years, is some evidence against the contention that he was a man of wealth 5 years earlier, particularly in the light of his refusal to render a net worth statement to an agent of respondent when called upon to do so during the course of his

investigation. He was careful to record small transactions in books personally kept by him but he made no entry of the purchase of stock of Stages. Without some explanation for his failure to record the stock purchase, there is ground for inferring that he did not at the time regard himself as a bona fide stockholder.

The contention of petitioners is based, in part, upon an assertion that Bentson applied for and was granted a loan of \$350,000 by ABC to provide him with cash to make the purchase. There is testimony of petitioners to that effect, but other evidence, which we regard as much more reliable, is to the contrary. Respondent's view is that E. Royce, acting on behalf of petitioners, applied for and negotiated the loan.

The minutes of the executive committee of ABC-Delaware, the parent company, stated, "We are asked to lend Mr. Roy Royce, personally, the sum of \$350,000." They considered and approved a loan of that amount to "R. Royce," secured by all of the 750 shares of stock of Stages. Bentson was not mentioned in the corporate record of ABC and nothing in the minutes of the meeting indicates that Bentson ever applied for the loan or had anything to do with it. Clearly, the loan was made to E. Royce. He and Bentson signed the note as co-makers. Bentson's signature on the note was not required by the executive committee in granting the loan and no proof was made of subsequent action to include him as a borrower. Thus, absent proof of

any requirement by the lender that Bentson sign the note as a co-maker, he would appear to have been a mere volunteer.

Moreover, the evidence convinces us that Bentson did not become involved in the transaction until after application was made for the loan by Royce.

According to the testimony, Bentson became interested as a participant in the venture during a visit to Portland in June 1945 and, after an examination of Stages' financial condition and its assets located in various cities, agreed to buy the uncommitted 350 shares. But, proof is lacking that he was in Portland before application was made to ABC for the loan.

Bentson stayed at the home of E. Royce during his visit. When asked at the hearing when Bentson's visit was made in June, 1945, E. Royce answered by testifying, "Yes, I think about in June." Jacob first testified that he met Bentson for the first time at a meeting attended by him and certain of the petitioners at the home of E. Royce during the middle or latter part of that month, and then that the meeting was held "Sometime the latter part of June. I don't recall the exact date—I remember it was a Sunday." Schneider testified that he heard several days before the meeting that Bentson was interested in acquiring stock of Stages, that he first met Bentson at the meeting, and that thereafter he accompanied Bentson on an inspection tour of all of the bus routes and facilities of Stages lasting 2½ days. The precise time of the inspection trip is not shown.

Without more evidence in support of petitioners on the point, we cannot find that the meeting at the home of E. Royce occurred earlier than the Sunday during the latter part of June 1945. The last Sunday in June fell on the 24th, which was 4 days after the loan application was considered by the executive committee of the parent company in New York City on the submission of the matter by Davidson, vice president of ABC-Portland. Clearly, Bentson, on such facts, could not have signed the application for the loan.

The respondent's determination rests, in part, on a finding that E. Royce alone applied for and negotiated the loan. Aside from the presumptive correctness of the finding, there is ample support in the evidence for that conclusion. And the circumstances are such as to create an inference that he obtained the loan for the benefit of all of the petitioners.

The petitioners did not wish to invest more than \$400,000 of their own money in the stock. Borrowing became either necessary or desirable to acquire the remaining 350 shares, and to obtain a loan, a pledge of all of the stock as security for the loan was required. All of the interested parties agreed to loan their stock for that purpose and it was put up as collateral for payment of the note evidencing the loan concurrently with its acquisition from the sellers. E. Royce thus assumed, as co-maker, primary liability for payment of the note and the other stockholders were liable to the extent of the value of their pledged stock. All benefited by the loan for only with it, was all of the stock acquired.

Aside from these considerations of the question, we search in vain for a justifiable corporate business reason for redeeming the stock. The redemption served to make available funds from surplus with which to pay the outstanding note and put petitioners in a position to repossess their stock free of any encumbrance. The retirement of about 47 per cent of the outstanding stock gave petitioners, collectively, complete ownership of Stages and increased their proportional interests in the remaining assets and future earnings without any additional investment on their part.

Certainly the redemption impaired, rather than improved, the financial condition of Stages, since surplus was charged with \$315,000 of the amount, the same as if a dividend of that amount had been paid. Stages paid substantial dividends prior to 1945 and none thereafter in spite of large earnings.

The large surplus had been built up as a reserve for the purchase of additional equipment, and in the tax return of Stages for 1946 a statement appears that retention of earnings was required for replacement of worn equipment and further expansion. Long-term obligations, aggregating a large amount, were incurred by Stages in 1945, 1946 and 1947 to provide funds for new bus equipment and other assets. The need for money for these purposes was known when the stock was redeemed. Without the redemption of stock outstanding in the name of Bentson, Stages would have had a reserve out of which the property could have been purchased. It

appears from these facts that the reduction in capital stock not only operated to the financial detriment of Stages but that the stockholders were fully aware at that time that such would be the result. In any event, we find no justification for concluding under the evidence that the redemption in question served a legitimate business purpose of Stages.

On this issue, respondent is sustained for lack of proof of error.

As to the item of interest paid by the company in connection with the loan of \$350,000, there is in the record insufficient proof to enable us to hold that respondent erred in his treatment of such item.

### Issue 2.

#### Findings of Fact.

On April 13, 1944, L. W. Hendrickson and his wife, Sue Hendrickson, owned real and personal property located at N.W. 21st and Burnside Streets, Portland, Oregon. The property consisted of an improved 2-story building. There were 7 stores on the ground floor and 1 large ballroom known as the Palais Royale Ballroom on the second floor. The property was subject to a first mortgage to Washington Mutual Savings Bank in the sum of approximately \$35,300. The Hendricksons were having financial and marital troubles and in order to carry himself through his financial difficulties, Hendrickson needed \$10,500. The property was placed in the hands of a realtor, I. O. Holmen, for sale. E. Royce was interested in the Palais Royale Ballroom, which he thought should be profitable on

account of the war, and the great number of young men presently in Portland. He was not interested in buying the entire property at that time, and initially wanted only to lease the dance hall part.

On April 13, 1944, the Hendricksons executed an option agreement pursuant to which E. Royce was given a 5-year option to purchase the property in question. This option provided, in part, as follows:

It is understood that said property is now under lease for a term which will expire April 19, 1949, and this option is upon condition and can only be exercised after all rentals reserved in said lease have been fully paid either at the time specified in said lease or in advance thereof. Said rentals having been previously fully paid, said E. Royce may exercise this option at any time prior to April 19th, 1949, and if not exercised before the day last mentioned, this instrument shall on that day become void.

It is expected that some part of the obligations outstanding against said property and mentioned in said lease will still remain unpaid at the expiration of the term of said lease.

To exercise this option, said E. Royce shall first pay or assume any remaining unpaid balance of said outstanding obligations, including principal and interest, and he shall, in addition, tender to us or either of us a sum of money the amount of which shall be determined in the following manner, to-wit:

By subtracting from the sum of \$35,000.00 the aggregate of principal of said outstanding indebtedness plus interest thereon to the date of exercis-

ing said option, and the sum obtained after subtracting said amount from \$35,000.00 shall be the sum to be paid to us, and nothing further shall be required of the said E. Royce to entitle him to conveyance of said property.

And we hereby consent, agree and direct that a certain deed of said real property and a bill of sale of said personal property this day executed by us to said E. Royce in anticipation of his exercising said option and placed in escrow with this agreement shall, upon the exercise of said option in the manner above stated, be delivered by the escrow agent to the said E. Royce.

Providing that if the said E. Royce shall fail to exercise said option, as herein provided and within the time herein provided, or if the Lessee under said lease, or its assigns, shall for any reason surrender or abandon said lease, or discontinue all effort to carry on under said lease, then and in either of said events said deed and bill of sale so placed in escrow shall be returned to us for cancellation.

On the same date, April 13, 1944, a deed and bill of sale were executed by the Hendricksons, conveying title to the premises and personal property therein to E. Royee, in anticipation of his exercising such option. These documents, together with the option agreement, were placed in escrow with the Bank of California, Portland, Oregon, with instructions to deliver the deed and bill of sale to E. Royee as soon as the option was exercised. These

instructions were set forth in a letter dated May 12, 1944, and read, in part, as follows:

On or about April 26, 1944, the undersigned placed with you, as an Escrow Agent for them, a Warranty Deed, Bill of Sale and Option Agreement together with a letter of instructions which letter read as follows:

“April 26, 1944

Bank of California  
National Association  
Portland Branch  
Portland, Oregon

Gentlemen:

I hand you herewith Warranty Deed, executed by Lloyd W. Hendrickson and Sue Hendrickson, husband and wife, in favor of E. Royce, conveying a portion of Block 31, Kings Second Addition to the City of Portland; also Bill of Sale between the same parties, covering equipment located and being in the building erected upon the above described property.

Mr. and Mrs. Hendrickson have granted unto Mr. E. Royce an option to buy the above described real and personal property. This option is dated April 13, 1944, a copy being attached hereto and made a part hereof.

You are to hold the Deed and Bill of Sale subject to the conditions set out in said option and are to deliver them according to the terms as set out therein. Lloyd W. Hendrickson will notify you when all the terms of said option have been com-

plied with and you will then deliver to Mr. E. Royce the Deed and Bill of Sale. No investigation will be required upon your part to determine whether or not the terms of said option have been complied with.

The charges or expenses for holding said escrow are to be paid one-half by Mr. E. Royce and one-half by Lloyd W. Hendrickson and Sue Hendrickson.

Yours truly,

Lloyd W. Hendrickson

Sue Hendrickson

Approved By:

E. Royce"

Now, while affirming said letter but for the purpose of simplifying and interpreting its terms and meeting certain requirements made by you, we agree as follows:

1. That it shall be the duty of said E. Royce upon exercising said option to give to you written notice thereof.

2. When you shall have such notice from said E. Royce and shall also have been advised by said Lloyd W. Hendrickson that all the terms of said option have been complied with, you shall deliver said Deed and Bill of Sale so left in Escrow to said E. Royce.

3. If said E. Royce shall fail to exercise said option, under the terms of said option agreement (copy of which was made a part of said letter and is now in your possession) then you are to de-

liver said Deed and Bill of Sale to said Lloyd W. Hendrickson and Sue Hendrickson under the terms of said option agreement. \* \* \* \* \*

/s/ L. W. Hendrickson  
/s/ Sue Hendrickson

On April 17, 1944, E. Royce, Schneider and Harold Murphy organized Burnside Realty, Inc., an Oregon corporation (hereinafter called Burnside), with an authorized capital stock of \$1,500.00, consisting of 30 shares, par value \$50 per share. Each of the organizers subscribed to and paid for 10 shares, and thereby acquired a one-third interest, respectively, in the corporation. Schneider was elected president, Murphy vice president and E. Royce secretary-treasurer. Subsequently, on or about January 1, 1946, each of the original shareholders relinquished 2½ per cent of their shares of stock, all of which were reissued to Edward J. Cheney, thus making 4 stockholders with each having a 25 per cent interest. Cheney maintained a dance school. Shortly after the corporation was organized, Cheney moved his dancing classes and dance school to this property. Cheney subsequently transferred title to his school of dancing to Burnside for 25 per cent of the stock of the corporation. An annual meeting of the board of directors of Burnside was held on the 14th day of January, 1946. The same officers were re-elected and thereafter the following motion was unanimously adopted:

Upon motion duly made, seconded and car-

ried, unanimously, it was agreed that each of the Directors who are equal stockholders of all of the capital stock of Burnside Realty, Inc., each owning 10 shares, should surrender 2½ shares of stock and that the total of said stock surrendered, 7½ shares, should be reissued by the Secretary to Edward J. Cheney, and that as payment in full for said 7½ shares of stock the said Edward J. Cheney was to transfer to Burnside Realty, Inc. his School of Dancing now being conducted by him in the premises known as the Palais Royale Ballroom at 2114 S.W. Burnside, Portland, Oregon.

An annual meeting of the stockholders of the corporation was held on January 13, 1947, at which meeting E. Royce, Schneider and Cheney were elected directors of the corporation. At an annual meeting of the board of directors held on the same day, Schneider was elected president, Cheney vice president, and E. Royce secretary-treasurer of the corporation.

Burnside was organized to engage in the business of operating rental properties and of operating a dance hall. On April 21, 1944, at a meeting of the directors of Burnside Realty, Inc., a resolution was unanimously adopted authorizing the corporation to lease the premises from the Hendricksons for a term of 5 years from April 19, 1944, at a monthly rental of \$1,500. On April 26, 1944, each of the stockholders loaned the corporation \$3,500, or a total of \$10,500, in return for which the corpora-

tion executed a promissory note for \$3,500 to each of them.

On or about April 29, 1944, the Hendricksons leased the property to Burnside Realty, Inc., for the agreed payments of \$1,500 per month and for a 5-year term. On April 26, 1944, the corporation deposited \$10,500 with the Hendricksons pursuant to the terms of the lease. This deposit represented the rent for the first month and the last 6 months of the lease. The lease to Burnside read, in part, as follows:

Agreement made April 29, 1944, between Lloyd W. Hendrickson and Sue Hendrickson \* \* \* herein called "First Parties", and Burnside Realty, Inc. \* \* \* herein called "Second Party",

Wherein it is mutually agreed as follows:

1. The First Parties hereby lease unto Second Party and Second Party hereby hires from First Parties all that plot of land with buildings \* \* \* described as follows:

That portion of Block 31, King's Second Addition to the City of Portland [at Northwest 21st and Burnside Streets] \* \* \*

\* \* \* \* \*

together with the fixtures, furniture, furnishings and equipment now in, upon or attached to said premises \* \* \* for the term of five years commencing April 19, 1944, and ending April 19, 1949, at the monthly rental of \$1500.00 to be paid in advance on or before the first day of each and every month of said term, except as hereinafter stated.

2. The rent for the first month and the last six months of said term, being \$10,500.00, has been paid

at the time of the signing of this instrument, and First Parties do hereby acknowledge receipt of same.

3. The rent being now paid to the 19th day of May, 1944 and all parties desiring that monthly rentals shall fall due on the first day of each month instead of the 19th day of each month, it is agreed that on or before May 19, 1944, Second Party will pay the rent, at the rate per month above stated, for the balance of the month of May, 1944, that is to say, from May 19, 1944 to June 1, 1944, to wit the sum of \$639.34, and thereafter the monthly rentals shall be paid on or before the first day of each month in advance.

4. In addition to the rental above stated, Second Party agrees to pay all taxes and fire insurance premiums for insurance on said property for the term of this lease.

5. It is understood that there is now a first mortgage on said real property held by Washington Mutual Savings Bank, which has agents at 236 S.W. Broadway in the city of Portland, county of Multnomah, state of Oregon, on which there is an unpaid balance as of this date of about \$35,300.00. That said mortgage bears 5% interest and by the terms thereof is payable \$550.00 per month, \$200.00 of which is set aside to pay taxes and fire insurance on the property, and the balance of \$350.00 is applied to pay interest and principal on the mortgage. It is understood that said mortgage is not assumed by Second Party, but payments thereon shall be made from rentals under this lease as hereinafter expressly provided, to the end that said

mortgage shall not at any time become in default during the term of this lease.

6. It is also understood that First Parties had outstanding against them two other obligations; one of \$7,109.39 and one of \$1,487.98, now held by Carroll, Hillman & Hedlund of said city of Portland, and said obligations may be liquidated by the payment of about \$179.05 monthly. These obligations are not assumed by the Second Party but shall be paid out of the rentals as hereinafter provided.

7. That beginning June 1, 1944, the monthly rentals shall be [applied] as follows:

(a) The sum of \$350.00 to said Washington Mutual Savings Bank, to be applied on said mortgage held by said bank.

(And to each such payment of \$350.00 Second Party shall add \$200.00, not a part of the rental money, as a fund to meet taxes and insurance under the terms of said mortgage, to the end that the conditions of said mortgage shall not be broken. It being herein agreed that Second Party shall pay all taxes, fire insurance, as a part of the consideration of this lease.)

(b) To Carroll, Hillman & Hedlund, the sum of \$179.05 to liquidate the principal and interest of said obligations held by them.

(c) To I. O. Holmen, the sum of \$117.92 to pay his commission as a realtor in effecting this transaction, it being understood that the total amount due him as such commission is the sum of \$6250.00.

(d) To Lloyd W. Hendrickson and Sue Hendrickson, the balance of said monthly rental, which should be about \$853.03.

The rent covering the period from May 19, 1944 to June 1, 1944 shall be paid to First Parties and need not be distributed as other payments are to be distributed under this paragraph.

8. It is further agreed, anything herein to the contrary notwithstanding, that all rental payments provided for in Paragraph 7 hereof shall be made by checks payable to the respective payees, which checks shall be turned over by Second Party to First Parties and by First Parties immediately delivered to the respective payees.

The lease covered the entire property, and the subtenants on the lower floor paid their rent directly to Burnside. During all of the years involved herein, Burnside operated the rental properties and the ballroom therein, and made the payments called for under the lease agreement. The payments made by Burnside were allocated and paid in accordance with paragraph 7 of the lease agreement.

Shortly after the option and lease agreement were negotiated, Sue Hendrickson obtained a divorce from L. W. Hendrickson. On December 4, 1945, L. W. Hendrickson sold his share of the money payments which he was entitled to receive under the lease and all his interest therein to C. T. Terril. Terril in turn assigned all the rights so acquired by him to B. Royce and Isabelle Royce on December 6, 1945.

On or about April 16, 1949, E. Royce exercised the option to purchase the property in accordance with the terms thereof. He paid \$35,000 under the option, as follows:

Payment to Sue Miller (formerly Sue Hendrickson) .....	\$ 6,531.15
Liability to B. Royce.....	6,531.15
Balance due on mortgage.....	21,937.70
<hr/>	
Total Option Price.....	\$35,000.00

The deed and bill of sale previously executed by the Hendricksons under date of April 13, 1944, conveying title to E. Royce, were then delivered to E. Royce by the escrow agent, and on September 23, 1949, the deed was recorded in the Record of Deeds for Multnomah County, Oregon.

Schneider and Murphy have recently instituted a joint suit against E. Royce for an accounting, claiming equal ownership in the property in question.

The respondent has determined that E. Royce acquired the property at N. W. 21st and Burnside Streets, Portland, Oregon, by purchase in April 1944 for a total consideration of \$125,000, computed as follows:

60 monthly payments by Burnside Realty, .

Inc., of \$1,500 each..... \$ 90,000

Option price of \$35,000 paid on

April 16, 1949, as follows:

Balance due on mortgage. \$21,937.70

Payment to Sue Miller

(formerly Sue Hend- rickson) .....	6,531.15
Liability to B. Royce...	6,531.15
<hr/>	
	35,000

Total .....	\$125,000
-------------	-----------

The respondent further held "that the rental payments made by Burnside Realty, Inc. pursuant to the lease agreement dated April 29, 1944, on such property, reduced by allowable depreciation, constitutes taxable income to you [E. Royce]. Taxable income reported for the years 1944 to 1947, inclusive, has, therefore, been increased by [such amounts] \* \* \*."

### Opinion

On April 13, 1944, E. Royce obtained a 5-year option to buy the Burnside Street property for a fixed price of \$35,000. On the same day, a deed and bill of sale were executed and, on April 26, 1944, placed in escrow with instructions to deliver the documents to E. Royce as soon as duly notified that the option had been exercised. Burnside was organized April 17, 1944, to engage in the business of operating rental properties and a dance hall. E. Royce was one of three original stockholders, each owning one-third interest and paying \$500 therefor. Later, a fourth stockholder was added, after which each party owned 25 per cent. Each of the original stockholders, on April 26, 1944, loaned the corporation \$3,500, receiving promissory notes in return. On April 29, 1944, the owners of the property (the Hendricksons) leased the same to Burnside for agreed payments of \$1,500 per month over a 5-year term. The corporation had deposited the sum of \$10,500 with the original owners of the property, which sum was to be applied to the rent under the provisions of the lease.

On April 16, 1949, E. Royce exercised his option to purchase the property by paying the agreed sum of \$35,000 provided in the option and thereby liquidating certain specified obligations. Thereafter, the deed and bill of sale were duly delivered to E. Royce as the owner of the property.

We are unable to follow respondent's reasoning by which he concludes that E. Royce acquired the property by purchase in April 1944 for a consideration of \$125,000, consisting of \$90,000 rent paid by Burnside over a 5-year period plus the \$35,000 provided by the option and paid by Royce. Nor can we agree that, as respondent contends, Royce derived income from the rental payments during the 5-year term of the lease. So far as the record shows, the transactions were wholly above board and were what they seem to be—a lease to the corporation in which Royce was a minority stockholder and an option to purchase granted to E. Royce on specified conditions, all of which were strictly complied with. The placing of the deed and bill of sale in escrow was a perfectly normal procedure. Title did not pass to Royce until he exercised the option and fully complied with its terms. Royce derived no taxable income from the rent payments by the corporation. Respondent is reversed. Cf. 2 Lexington Avenue Corp., 26 T.C. . . . (July 13, 1956), in which a somewhat comparable set of facts was involved.

### Issue 3

#### Findings of Fact

The Hippodrome Amusement Company (herein-

after sometimes called Hippodrome) was an Oregon corporation engaged in the business of renting property at Seaside, Oregon. It owned two pieces of property in the center of the city, one improved, the other unimproved. Most of the improved property was devoted to rental purposes, and the balance, in 1945, was used as a dance hall. In 1945, the issued and outstanding stock of the corporation was owned as follows:

E. Royce	218	shares
B. Royce	111	"
Niederkrome	19	"
Stephen Bartle	5	"
<hr/>		
Total	353	"

The first three persons above listed were directors. E. Royce was president and Niederkrome secretary and auditor of the corporation. The latter worked under the former and, to a considerable extent, followed his instructions and orders.

On December 28, 1945, Hippodrome issued a check payable to E. Royce in the amount of \$20,000. This payment to E. Royce was recorded on the corporate books by debiting an account receivable, entitled "Due from Stockholders," and crediting the cash account. The disbursement of \$20,000 to E. Royce was made with the consent and agreement of B. Royce and Niederkrome. There were no minutes of the corporation authorizing such payment. E. Royce executed no note or other evidence of indebtedness, he paid no interest at any time, and to

the time of the hearing had made no repayment. E. Royce has at all times been financially able to repay the amount withdrawn by him. His personal financial statement in 1945 reflected a net worth of \$1,366,000. He had large investments in many business enterprises. In 1945, E. Royce loaned Niederkrome \$55,000, advanced Schneider \$50,000, and invested \$145,000 in stock of Stages. Later he financed the development of a gold mine called Alder Gold-Copper Company, promoted the sale of its stock, and obligated himself to supply the company with \$250,000. In 1945, he reported a net income of \$122,951.95, which included earnings of \$113,530.63 from five partnerships, namely, Yellow Cab Company of Seattle, Gray Line Motor Tours of Seattle, Yellow Cab Company of Portland, Royce Brothers of Portland, and Queen City Garage of Seattle.

In 1948, Hippodrome disbursed \$400 to Niederkrome which was also charged to the account receivable entitled "Due from Stockholders." Similarly, as in the case of E. Royce, there were no corporate minutes authorizing the payment; he executed no note or other evidence of indebtedness; he paid no interest at any time; and there has been no repayment.

On April 1, 1954, Niederkrome opened new accounts on the books of Hippodrome entitled "Notes Receivable—E. Royce" and "Notes Receivable—F. C. Niederkrome," to which he debited \$20,000 and \$400, respectively, at the same time crediting the

"Due from Stockholders" account with \$20,400, thus closing out such account.

Hippodrome operated at a loss before the war and carried a deficit for about 10 years during the 30's. In the early years it was necessary for E. Royce and B. Royce to advance moneys to the company at times to help it out. The financial and operating condition of the company improved thereafter and, in the years before 1945, an earned surplus was built up, and funds were accumulated. The company continued to prosper in 1945 and the years subsequent thereto, and is presently a company in good financial standing with a book net worth of \$70,000, the fair value of which is probably \$140,000. Hippodrome operated on the basis of a fiscal year ending March 31. On March 31, 1945, the earned surplus was \$16,576.34. It had earnings of \$5,127.06 from operations during the year ended March 31, 1946. The earned surplus on March 31, 1946, was \$21,703.40. There was no formal declaration of dividends by Hippodrome in December 1945.

Hippodrome Amusement Company had no building program or plans for immediate expansion in 1945. Its plans for the remodeling of its buildings, or for the construction of a building on the vacant portion of its property, were not conceived or developed until 1948 or 1949.

In 1948 or 1949, plans were made based on the idea of Hippodrome building a ticket office and terminal for Stages. Such plans never materialized.

Stages in 1948 purchased two vacant lots adjacent to its present terminal in Seaside to provide turn-around facilities for its buses. In 1954, Hippodrome entered into negotiations with the Post Office Department to erect a post office building on the unimproved portion of its property. A preliminary sketch for the building was obtained on March 17, 1954, at a cost of \$60, but the negotiations were not successful. At the time of the hearing, E. Royce was negotiating with Pacific Greyhound, the largest motor operator on the West Coast, to provide it with a new location on the property, with better facilities than those which Pacific Greyhound had at Seaside.

We find as an ultimate conclusion of fact that the withdrawal of \$20,000 by E. Royce in 1945 was not a loan to him by Hippodrome, but was a distribution out of the profits taxable as a dividend.

### Opinion

This issue involves only Docket No. 51527 and poses the question of whether the amount of \$20,000 withdrawn from Hippodrome by E. Royce in 1945 was received by him as a dividend or as a loan. Respondent determined the former and petitioner urges the latter. The appropriate statute is section 115(a), Internal Revenue Code of 1939.<sup>2</sup>

---

<sup>2</sup> Sec. 115. Distributions by Corporations.

(a) Definition of Dividend.—The term "dividend" when used in this chapter \* \* \* means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913 \* \* \*.

The question at issue turns largely on the intent of E. Royce and of Hippodrome in the premises and at the material times. That is to say, was the withdrawal intended to be left to the permanent use of Royce in lieu of a dividend or was he merely a borrower? *Carl L. White*, 17 T.C. 1562; *Wiese v. Commissioner*, 93 F. 2d 921, affirming 35 B.T.A. 701. The intent of the parties is to be inferred from all the facts and inferences found on the record. The present facts, in our considered opinion, properly give rise to the controlling inference that the withdrawal, which has never been repaid, was, at all times material, intended to be and was in fact a distribution of profits and not a loan to Royce—hence our holding and finding of such a fact.

Although there is not total agreement among the facts, the above conclusion is well buttressed. The greater probative weight of the evidence and the greater logic of the inferences are in opposition to petitioner's contention. On the whole record, we are convinced and have found that the payment was not a loan but was a distribution of profits taxable as a dividend. Certain it is that petitioner, who has the burden of proof, has not proven the contrary. We have searched the record in vain for a valid or persuasive reason for the corporation loaning Royce, its majority stockholder and whose net worth was well in excess of \$1,000,000, the relatively small sum of \$20,000. Nor can we find a valid or persuasive reason, if the payment was a loan, for not repaying the same to the corporation. Respondent is sustained.

Issue 4  
Findings of Fact

Prior to August 1, 1942, Yellow Cab Incorporated was an Oregon corporation engaged in the operation of a taxicab business in Portland, Oregon. On August 1, 1942, the corporation was liquidated and dissolved. On the same date, August 1, 1942, a partnership under the name of Yellow Cab Company (hereinafter called Portland partnership) was formed to operate the business formerly conducted by the corporation. On July 31, 1942, immediately prior to the dissolution of the corporation, E. Royce transferred 14,000 shares of the corporate stock to his wife, Dora F. Royce. This transfer represented slightly less than half of the shares of stock formerly held by him. The transfer of the stock to Dora was made in anticipation of the planned dissolution of the corporation and the simultaneous formation of the partnership, and the purpose of the transfer was to qualify Dora for admission to the partnership.

The Agreement and Articles of Partnership of Portland Yellow Cab provided, in part, as follows:

The following Articles of Partnership entered into on this 1st day of August, 1942, by and between E. Royce, B. Royce, Charles W. Keffer, C. H. Luton, Dora F. Royce and Isabelle H. Royce, of Portland, Oregon, and Vancouver, Washington.

Witnesseth:

That, Whereas, the parties hereto owned all of the common stock of Yellow Cab Incorporated, a corporation; and

Whereas, upon the liquidation of said company on the 1st day of August, 1942, said company sold, assigned and transferred to the parties hereto all its assets; and

Whereas, the parties hereto have assumed all of the liabilities of the corporation;

Now, Therefore, It Is Mutually Agreed by and between the parties hereto that they will accept said assets and assume all of the liabilities of said corporation, and that the following agreements shall constitute their

### Articles of Partnership

#### I.

Said parties above named agree to carry on business under the name and style of

Yellow Cab Company

#### II.

The partnership to which this agreement applies began on this the 1st day of August, 1942, and shall continue for the duration of the joint lives of the parties hereto, unless otherwise dissolved by action of the parties.

\* \* \* \* \*

#### IV.

The principal office and place of business of the partnership shall be in the City of Portland, Multnomah County, Oregon, and at such other place or places as the partners shall hereafter determine.

#### V.

The capital of said partnership shall consist of the assets formerly owned by Yellow Cab Incor-

porated, a corporation, together with all the income and profits arising from the employment of said assets in the business conducted hereunder and not paid to the partners in drawings or by disbursement of profits, and the interests of the respective partners hereto shall be as follows:

E. Royce	26.1575%
B. Royce	26.1575%
Charles W. Keffer	.659 %
C. H. Luton	.906 %
Dora F. Royce	23.06 %
Isabelle H. Royce	23.06 %

\* \* \* \* \*

## VII.

The profits and losses of the partnership business shall be borne by the parties in the proportion to the interest designated in paragraph V above.

## VIII.

Each of the parties shall have an equal voice in the control of the business and operation of the partnership. It shall be the duty of the partnership to keep accurate books of account, which shall be open at all reasonable times to the inspection and examination of each of the partners.

## IX.

Upon the dissolution of the partnership at or prior to the death of any of the partners, the said business shall be wound up, debts of the partners to the partnership, if any, paid, and the surplus divided between the partners according to their respective interests as herein set forth.

In Witness Whereof, the parties hereto have cause [sic] their signatures to be affixed to these Articles of Partnership on the day and date first above written.

/s/ E. Royce  
/s/ B. Royce  
/s/ C. H. Luton  
/s/ Charles W. Keffer  
/s/ Dora F. Royce  
/s/ Isabelle H. Royce.

Luton and Keffer, referred to above, were employees, and their small partnership interests were purchased by E. Royce and B. Royce on November 28, 1942.

Prior to April 20, 1944, Yellow Cab Company of Seattle was a Washington corporation engaged in the operation of a taxicab business in Seattle, Washington. The issued and outstanding shares of stock of the corporation were owned as follows:

W. L. Rothschild	607½
J. A. Baldi	606
Geo. E. Worster	606
D. N. Newton	606
E. Royce	1,402½
B. Royce	1,402½
A. H. Wenck	269
<hr/>	
Total Shares	5,500

On May 1, 1944, the Yellow Cab Company was liquidated and dissolved. On the same date, May 1, 1944, a partnership of the same name (hereinafter called

Seattle partnership) was formed to operate the business formerly conducted by the corporation.

On April 20, 1944, immediately prior to the dissolution of the Seattle corporation, E. Royce transferred 402½ shares of the corporate stock to his wife, Dora F. Royce. At the same time he transferred 700 shares of the stock to himself as trustee for his minor daughter, Eunice Royce, then 14 or 15 years of age. He retained 300 shares of stock for himself. On the same date, April 20, 1944, E. Royce executed a declaration of trust by which he declared himself trustee of the 700 shares of stock in trust for Eunice Royce. The transfers of the stock to Dora F. Royce, and to himself as trustee for Eunice Royce, were made in anticipation of the planned dissolution of the corporation and the simultaneous formation of the partnership, and the purpose of the transfers of stock was to qualify Dora and the trust for admission to the partnership. Gift tax returns were filed covering the gifts of stock in the Seattle corporation to both Dora and the trust.

The Articles of Copartnership of the Seattle partnership provided, in part, as follows:

This Agreement, made as of May 1, 1944, by and between B. Royce, First Party, E. Royce, Second Party, E. Royce, Trustee for E. M. Royce, a minor, Third Party, D. F. Royce, Fourth Party, A. H. Wenck, Fifth Party, W. L. Rothschild, Sixth Party, J. A. Baldi, Seventh Party, G. E. Worster, Eighth Party, D. N. Newton, Ninth Party, and L. S. Ackerman, Tenth Party, Witnesseth:

Formation of Partnership. First: The parties hereto hereby associate themselves as partners and hereby form and constitute themselves a partnership under the laws of the State of Washington, for the purpose of conducting a business of transportation of persons for hire by means of taxicabs, in the City of Seattle, State of Washington, or any other transportation business whether of persons or property which may be determined upon by decision of two-thirds in interest of the partners.

Term. Second: The term of the partnership shall commence on May 1, 1944 and shall terminate on May 1, 1949; provided, however, that this agreement shall be automatically extended for further and additional successive periods of five (5) years each, unless any party give written notice to the other parties of his or her intention to terminate this agreement at the expiration of any five-year period, such notice to be given not less than sixty (60) days prior to the first day of May of the year in which such notice is given.

Location of Business. Third: The location of the principal place of business of the partnership shall be in the City of Seattle, King County, State of Washington.

Name. Fourth: The said partnership shall be conducted under the firm name and style of Yellow Cab Company. No partner shall have any right to the use of the name apart from this partnership or any successor partnership which may be formed of which such partner may be a member.

Capital. Fifth: The partnership shall commence business with a capital consisting of all assets of whatsoever kind and nature of Yellow Cab Company of Seattle, a Washington corporation, as the same were on April 30, 1944, subject to the liabilities of said corporation, which said liabilities are hereby assumed by the partnership. The Parties of the First to the Ninth Parts, inclusive, are stockholders of Yellow Cab Company of Seattle, owning and holding all of the outstanding stock of said corporation, and said parties do hereby sell, assign, transfer and set over unto the partnership hereby formed all of such assets distributed to them upon final liquidation of said corporation, subject to all the liabilities of said corporation. The Parties of the Sixth, Seventh, Eighth and Ninth Parts have sold to the Party of the Tenth Part one-fifth (1/5) of their interest in such assets distributed to them upon final liquidation of said Yellow Cab Company of Seattle.

Decisions as to Partnership Matters. Sixth: Except as otherwise herein provided, decisions as to partnership matters shall be made by a majority in interest of the partners.

Salaries and Distributions of Profits. Seventh: Partnership profits shall be paid and applied as follows and in the following order of priority:

(a) A. H. Wenck, Fifth Party, shall manage the business of the partnership and shall receive a monthly salary in such amount as may be determined from time to time by decision of the partners.

(b) B. Royce, First Party, E. Royce, Second Party, W. L. Rothschild, Sixth Party, and J. A. Baldi, Seventh Party, will devote as much of their time to the business of the partnership as they deem necessary. Each such party shall be sole judge of the amount of his own time necessary for such purpose. W. L. Rothschild and J. A. Baldi will serve without compensation. B. Royce and E. Royce will each receive two and one-half per cent ( $2\frac{1}{2}\%$ ) of the net profits of the partnership business, but not exceeding Five Thousand Dollars (\$5000) each per annum.

(c) The balance of the profits, if any, shall be divided among the partners as follows:

Name and percentage:

B. Royce— $1402\frac{1}{2}/5500$ ths

E. Royce— $300/5500$ ths

E. Royce, Trustee for E. M. Royce, a minor— $700/5500$ ths

D. F. Royce— $402\frac{1}{2}/5500$ ths

A. H. Wenck— $269\frac{1}{2}/5500$ ths

W. L. Rothschild— $485\frac{1}{2}/5500$ ths

J. A. Baldi— $485/5500$ ths.

G. E. Worster— $485/5500$ ths

D. N. Newton— $485/5500$ ths

L. S. Ackerman— $485/5500$ ths

and any loss sustained on account of said business shall be borne in the proportions last hereinabove mentioned \* \* \*

Drawing Accounts and Distributions of Profits.  
Eighth: No withdrawals of capital or payment of

profits shall be made by or to any partner unless such withdrawals or payments are uniform as to all partners in proportion to their respective interests and are authorized by decision of the partners.

Duties of Partners. Ninth: A. H. Wenck, Fifth Party, shall devote all of his time to the business of the partnership and during its continuance shall not engage in any other business (except Gray Line Tours) unless authorized by decision of the partners \* \* \*

\* \* \* \* \*

In Witness Whereof, the undersigned have caused these presents to be executed as of the day and year first hereinabove written.

/s/ B. Royce

/s/ E. Royce

/s/ E. M. Royce

By E. Royce, Trustee

/s/ D. F. Royce

/s/ A. H. Wenck

/s/ W. L. Rothschild

/s/ J. A. Baldi

/s/ Geo. E. Worster

/s/ D. N. Newton

/s/ L. S. Ackerman.

The Portland partnership and the Seattle partnership kept their books and prepared their tax returns on an accrual basis of accounting during all the years in question. E. Royce was the most active partner in the Portland partnership. He made the important decisions as well as the day-to-day decisions involved in the operation of the business. He

was in charge of the office, and his supervision and management included the shop and garage personnel. B. Royce was relatively inactive. Niederkrome was accountant for the Portland partnership. Dora devoted some time to checking the drivers and cars at the stands, boats, depots and any place in Portland where the cabs came frequently to pick up or discharge passengers. She also checked the appearance and condition of uniforms, cleanliness, number of passengers carried and made written reports on these matters to the office. On Schedule I of the partnership returns filed by the Portland partnership for the years 1946 through 1949, no percentage of time devoted to the business by Dora is indicated. Duties similar to those rendered by Dora for the Portland partnership were rendered by an employee of the Seattle partnership for that firm.

The drawing accounts of Dora and E. Royce on the books of the Portland partnership show withdrawals during the taxable years 1944 through 1947, as follows:

Year	Dora F. Royce	E. Royce
1944	\$ 48,777.75	\$ 58,184.94
1945	69,180.00	80,820.00
1946	48,865.01	57,086.99
1947	4,612.00	5,388.00
Total	\$171,434.76	\$201,479.93

The withdrawals of both from the Seattle partnership during the years 1945 through 1949, were as follows:

Year	Dora F. Royce	E. Royce
1945	\$41,622.53	\$30,994.97
1946	19,662.53	14,644.97
1947	12,342.53	9,194.97
1948	12,342.53	9,194.97
1949	5,022.53	3,744.97
Total	\$90,992.65	\$67,774.85

At the end of 1947, the Portland partnership's accumulated earnings distributable to Dora exceeded her withdrawals by \$35,434.76, and those distributable to E. Royce exceeded his withdrawals by \$38,395.26. At the end of 1949, the Seattle partnership's accumulated earnings distributable to Dora and E. Royce exceeded their withdrawals by the amounts of \$18,733.16 and \$14,008.75, respectively.

The foregoing withdrawals by Dora were in the form of checks made payable to her. Checks so issued to her by the Portland partnership in 1944, in the aggregate amount of \$48,777.75, were endorsed in blank. Another check so issued to her by the Portland partnership on February 23, 1945, in the amount of \$11,530, was also endorsed in blank by Dora and paid by the drawee, The U. S. National Bank, on April 3, 1945. All other checks issued to Dora by the Portland partnership and all those issued to her by the Seattle partnership, totaling \$170,479.59, were endorsed in blank both by her and by E. Royce.

During the year 1944 and through July of 1945, Dora maintained a checking account at the Sixth

and Morrison Branch of The First National Bank of Portland in the name of "Mrs. E. Royce." Beginning with August 1945, the account was in the name of "Dora F. Royce." The deposits to and withdrawals from this account for the years 1944 through 1947 were as follows:

Year	Deposits	Withdrawals
1944	\$ 21,386.75	\$ 22,507.83
1945	38,712.25	36,114.11
1946	73,491.78	71,563.02
1947	46,485.00	50,106.19
Total	\$180,075.78	\$180,291.15

The foregoing deposits represented some of the distribution checks above mentioned. Dora also had occasion to use a safe deposit box during each of the taxable years, into which were placed various amounts of cash derived from such distributions. The balance in the account on January 1, 1944, was \$2,242.57 and on December 31, 1947, \$2,648.91.

A substantial portion of the partnership earnings distributed to Dora by both partnerships were expended in payment of state and Federal taxes. The amounts so expended by Dora for Federal taxes for the years 1944 to 1947 were as follows:

Year	Amount
1944.....	\$ 29,793.72
1945.....	57,315.46
1946.....	51,721.22
1947.....	29,454.14
Total.....	\$168,284.54

Dora filed joint returns with E. Royce for 1948 and 1949, and taxes were paid in the amounts of \$28,230.87 and \$17,522.44, respectively, or a total of \$45,753.31.

A portion of the distributions made to Dora by both partnerships was expended by her for such items as:

Item	Approximate Cost
2 Fur Coats	\$ 1,850
2 Chrysler Autos	8,000
Plymouth and Cadillac	Unknown
Exercycle	350
Silverware	1,800
Lace Cloth	400
Government Bonds	7,000
Missouri-Pacific Stock	2,500
House Improvements	18,000

In addition to the above amounts, a total of approximately \$70,000 was loaned to E. Royce to be invested in Alder Gold-Copper Company, a company in which, in 1947 and years subsequent thereto, E. Royce was interested. Other amounts were given to E. Royce to reimburse him for payments he had made for Dora.

Respondent determined that Dora F. Royce was not a bona fide partner in the Portland and Seattle partnerships, and accordingly included in the income of the petitioner E. Royce the partnership profits reported by her.

We conclude that Dora F. Royce was not a bona fide member of the Portland and Seattle partnerships during the taxable years for income tax purposes.

## Opinion

The question is whether, in the years involved, Dora was, for tax purposes, a member of the Portland and Seattle partnerships.

As was said by the Supreme Court in *Commissioner v. Culbertson*, 337 U.S. 733, with regard to the bona fides of a family partnership:

The question is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard \* \* \* but whether, considering all the facts —the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise. \* \* \*

In the earlier case of *Commissioner v. Tower*, 327 U. S. 280, the same Court had said that where, as here, the validity of an alleged partnership is challenged by an outsider, there arises the question of whether the parties involved “really and truly intended to join together for the purpose of carrying on business and sharing in the profits or losses or both. And their intention in this respect is a question of fact, to be determined from testimony disclosed by their ‘agreement, considered as a whole,

and by their conduct in execution of its provisions.''" *Commissioner v. Tower*, *supra*, at page 287.

It is true that the parties went through the formalities of making Dora a partner in both firms.

Adequate written agreements were drawn up and signed by all the purported partners. The capital given her by her husband (with the understanding and implied condition that it be invested in the partnerships) was turned in. Dora performed certain relatively inconsequential services for the Portland firm, similar services for the Seattle partnership being performed by an employee. Distributions of profits were made to her in large amounts.

However, the checks covering the distributions were endorsed in blank either by Dora or by Dora and her husband and were used to pay income taxes or were largely invested by the husband in various projects in which he was interested. Although E. Royce filed a gift tax return covering the purported gift to Dora of stock in the Seattle corporation (also covering the gift to the trust subsequently herein discussed), there is no evidence that such a return was filed covering the purported gift of the Portland corporation stock. Inconsistent with her testimony that she performed important services are the statements or the pregnant omissions in certain of the partnership returns signed and sworn to by E. Royce indicating that Dora performed no services for the partnerships.

We have carefully studied these facts and all the facts pertinent to the issue against the background in which they appear and in the light of the cri-

teria set out by the Supreme Court, and have come to the conclusion that the parties involved at no time really and truly intended Dora to be a bona fide partner in carrying on the business of the Portland and Seattle partnerships. We have accordingly so found as a fact and here so hold.

### Issue 5 Findings of Fact

The Declaration of Trust executed by E. Royce on April 20, 1944, and above referred to, provided, in part, as follows:

That I, Ezra Royce, of Portland, Multnomah County, Oregon, do hereby declare that I am the sole and absolute owner of the following described personal property in my own right, but do declare that I hold the same henceforth from date hereof, in trust and upon the trusts herein declared and created, for the benefit of my beloved daughter, Eunice M. Royce; and others hereinafter named:

Seven Hundred (700) shares of the common capital stock of The Yellow Cab Company of Seattle, represented by Certificate No. 23.

The Purpose and the Terms and Conditions upon which I hereby declare that I, as trustee, hold the above-described property in trust are as follows:

(1) To collect the net income therefrom and to pay the same over to my said daughter, or to accumulate the same for her use and benefit, and invest and reinvest the same as hereinafter provided for principal of the trust estate, and as her absolute and separate property for and during the term of

her natural life, or until this trust is sooner terminated by my death or otherwise, as hereinafter provided for.

(2) I, as such trustee hereunder, am to have and there is hereby reserved to and vested in me full discretionary power and authority to sell or exchange from time to time, all of the aforesaid property or any part thereof, or any other property belonging to this trust, and to buy any other property, upon such terms, for such price, or for such property as in my discretion I shall see fit; and the proceeds so received upon such sale or exchange shall be invested or reinvested in such securities or other properties as I may deem advisable, all of same to be held upon the same trusts as are hereinabove and hereinafter declared.

(3) In the event that it shall appear to me at any time or times that the personal or family necessities of my said daughter require a payment or payments of money to her, then in my sole discretion, I may pay over to her, and there is hereby reserved to me the power and authority to pay over to her, such portion of the corpus of the said trust estate as I may deem necessary or proper; without first applying any net income or accumulated net income therefor, and in such event, any such payments may be treated by me, at my election, as trustee, as if an absolute gift had been made herein of such corpus or portions thereof to my said daughter, or as a loan to be repaid to the trust estate by her, either from future income or otherwise.

(4) This Trust shall be irrevocable, with no power reserved to alter, amend, cancel, revoke or terminate the same, except as may otherwise herein be provided.

\* \* \* \* \*

(6) I, alone, hereby reserve the right and power, during my lifetime to nominate and appoint a successor trustee, to carry out the provisions of this trust, in my place and stead, such appointment to take effect either during my lifetime or at my death, as I may direct, by the execution of a formal document designating such successor trustee, but the exercise of such power shall not exhaust the power or extend the term of the Trust. Any such appointment shall be completed upon the turning over and delivery to such successor trustee of the Trust property and estate.

(7) Should I at any time become incapacitated to administer this trust, or upon my death, in default of the appointment of another trustee by me, my wife, Dora F. Royce, my brother, B. Royce and A. L. Schneider shall act as co-trustees in my place and stead, each of said co-trustees to have an equal voice in the management of said estate, and such successor trustees are hereby directed to pay to my said daughter monthly or quarterly during her lifetime, beginning with the date of my death, so much of the net income of the trust estate after paying costs and charges as may be necessary to meet the schooling, living and other needs and desires of my said daughter as she may direct.

In the event the annual income from the trust

estate in any year, before or after my death, shall fall below \$2,000.00, and it shall appear to the trustee or trustees that the personal or family needs of my said daughter shall require a payment or payments of money in addition to the income from the trust property, the trustee or trustees in his or their discretion may pay over to my said daughter, and it is hereby reserved to such trustee or trustees the power and authority to pay over to her, such portion of the principal of the trust estate as may be necessary to pay to my said daughter sums which shall aggregate, at least, the sum of \$2,000.00. This provision is not intended to limit the payments to my said daughter, but to enlarge the powers otherwise granted in this instrument.

(8) Before making any investment, change of investment, or sale of any property or securities in the trust fund, the trustee or trustees who succeed me and their successors shall consult and advise with my said daughter, Eunice M. Royce, and, if the said Eunice M. Royce shall fail to indicate her disapproval of any proposed investment, change of investment, or sale, within fifteen (15) days after notice thereof, the trustees, if they deem the same advisable, may make such investment, change of investment or sale, without such approval.

(9) Upon my said daughter reaching the age of thirty-five (35) years, if, in the judgment of the trustee or trustees then living, my said daughter desires to receive the corpus of the trust estate and she is considered by the said trustee or trustees to be capable of managing the trust estate wisely, then, and upon the concurrence of these two

events, the trustee or trustees shall convey the corpus of this trust to my said daughter in her absolute right. If, in the judgment of the trustee or trustees my said daughter is not capable of managing the trust estate wisely when she reaches the age of thirty-five (35) years, then as soon thereafter as she convinces the trustee or trustees of her ability to manage said estate wisely, said trust property shall be conveyed to her absolutely.

\* \* \* \* \*

In Witness Whereof, I have hereunto set my hand and seal this 4/20/44 [sic] day of April, 1944.

[Seal]      /s/ Ezra Royce.

E. Royce never regarded the Declaration of Trust as a real trust, nor did he treat it as such during the ensuing years. He did not file fiduciary income tax returns for the trust. He made no accounting to Eunice, nor has he ever reported to her in respect to the status of the trust. He filed income tax returns in the name of Eunice M. Royce for the years 1944 and 1946 to 1949, inclusive. He signed her name "Eunice Mae Royce," or "E. M. Royce, by E. Royce, Trustee," on the returns. He so filed an unsigned Form 1040 for 1945. Eunice became 18 years old in 1947. She lived at home until then. From 1947 to 1951 she went to the University of Oregon. From March 1952 to March 1954, Eunice worked for the Imperial Travel Bureau. She was married June 12, 1954. She is now Eunice Dodge and resides at Wenatchee, Washington. At the time of the hearing she was 26 years of age. Eunice was first told about the trust when she was 18 years of age.

During the years in question, substantially the only income reported on the returns filed in the name of Eunice Royce represented those earnings of the partnership distributable to "E. Royce, trustee for E. M. Royce," as follows:

Year	Amount
1945.....	\$47,797.11
1946.....	54,826.23
1947.....	47,645.90
1948.....	20,863.27
1949.....	16,611.08

The drawing account of "E. Royce, trustee for E. M. Royce," on the books of the Seattle partnership disclosed withdrawals aggregating \$205,154.94 during the period from January 1, 1944, to December 31, 1949, as follows:

Year	Amount
1944.....	\$ 16,422.49
1945.....	77,422.49
1946.....	46,922.49
1947.....	34,192.49
1948.....	21,462.49
1949.....	8,732.49
Total.....	\$205,154.94

On December 31, 1949, the earnings distributable to "E. Royce, trustee for E. M. Royce," exceeded the withdrawals by \$32,592.59. The excess amount had been retained in the business and not withdrawn.

The foregoing withdrawals were deposited by E. Royce in a trust account at The U. S. National Bank. E. Royce, alone, was authorized to sign checks on this account. He has exercised absolute

discretionary power and authority over the funds and, excepting for certain small amounts, Eunice has never received anything from the trust. The checks issued by E. Royce on the trust account during the period from January 1, 1944, to December 31, 1949, aggregated \$186,046.21, leaving a balance in the account of \$19,108.73. These funds were directed to the following purposes:

Payment of Federal and state taxes....	\$ 89,464.96
Purchase of Government bonds.....	281.25
Payment of personal expenses of	
Eunice Royce .....	2,200.00
Loans to or for E. Royce.....	94,100.00
Balance left in account.....	19,108.73
<hr/>	
Total.....	\$205,154.94

During the years involved, Eunice had a personal checking account in The First National Bank, to which E. Royce sometimes deposited small amounts drawn from the trust account for certain personal expenses of Eunice while she attended college. Such deposits were as follows:

Date	Amount
December 1, 1947.....	\$ 200.00
March 4, 1948.....	300.00
June 15, 1948.....	300.00
June 20, 1949.....	300.00
September 23, 1949.....	300.00
October 27, 1949.....	300.00
Check No. 20.....	200.00
Check No. 35.....	300.00
<hr/>	
Total.....	\$2,200.00

The sole investment of trust funds in Governmental or other conventional securities amounted to \$281.25. This investment consisted of three checks drawn on the trust account in 1944 and 1945, made payable to "Yellow Cab Co.," as follows:

Date of Check	Amount
December 9, 1944.....	\$ 75.00
May 17, 1945.....	75.00
November 29, 1945.....	131.25
<hr/>	
Total .....	\$281.25

The "loans" to E. Royce from the trust account aggregated \$94,100 on December 31, 1949. Of this amount, \$7,100 was loaned to Royce, Inc., and the balance of \$87,000 to E. Royce, personally. Royce, Inc., owned the Columbia Athletic Club building, and E. Royce was principal stockholder of the corporation. The loans to Royce, Inc., were made in 1948 and 1949, and were repaid in 1950. The loans to E. Royce consisted of three checks drawn on the trust account at the time and in the amounts indicated below:

Check No.—Date of Check	Amount
6 Between June 15 and	
July 10, 1945 .....	\$60,000.00
10 December 29, 1945.....	25,000.00
15 July 10, 1946 .....	2,000.00
<hr/>	
Total.....	\$87,000.00

These loans have not been repaid, and are now evidenced by three renewal notes bearing 3 per cent interest, the original notes having been canceled.

These renewal notes are 1-year notes made payable to Eunice Mae Royce. The dates of execution, face amounts and other data shown thereon are as follows:

Date of Execution	Amount of Note	Repayment— Amount & Date
July 10, 1951 . . . . .	\$ 2,000	\$ 200. (6-18-53)
		500. (5- 5-53)
		230. (5- 7-54)
		85. (9-26-53)
July 7, 1952 . . . . .	60,000	3,500. (1-13-54)
		1,000. (2-15-54)
December 26, 1953 . .	25,000	None
		_____
	\$87,000	\$5,515.

No interest has been paid and, aside from the above payments, the loans to E. Royce from the trust account remain unpaid to date.

Respondent determined that Eunice Royce was not a bona fide partner in the partnership and accordingly included in the income of the petitioner E. Royce the partnership profits in the returns filed in her name.

E. Royce and the other parties involved did not in good faith and acting with a business purpose intend to join together with Eunice or with the trust of which she was beneficiary as partners in the conduct of the Seattle partnership.

#### Opinion

This issue involves Docket Nos. 51526 and 51527 and presents the question of whether Eunice or the

trust of which she was beneficiary was a member, for tax purposes, of the Seattle partnership during the taxable years.

Here, again, the same criteria are to be employed in determining the true intent of the parties concerned, as in the preceding issue. *Commissioner v. Culbertson*, supra. Having thus considered all of the facts and circumstances found on this record which bear upon the intent of the parties, we have found as a fact that they did not in good faith and acting with a business purpose intend to join together with Eunice or the trust of which she was beneficiary as partners in the present conduct of the Seattle partnership. Such finding resolves the issue here before us. A detailed recital of the facts upon which our conclusion is based would serve no useful purpose. Suffice it to say, such facts do not materially differ from those found in such cases as *Herman Feldman*, 14 T.C. 17, affd. 186 F. 2d 87; *Lyman A. Stanton*, 14 T.C. 217, affd. 189 F. 2d 297; *Stanback v. Robertson*, 183 F. 2d 889; *Zander v. Commissioner*, 173 F. 2d 624, affirming a Memorandum Opinion of this Court; and *Economas v. Commissioner*, 167 F. 2d 165, affirming a Memorandum Opinion of this Court, wherein it was held that a trust under the circumstances there present was not a bona fide partner in the business enterprises respectively involved and that the parties did not so intend. Cf., also, *Joseph J. Morrison*, 11 T.C. 696, affd. 177 F. 2d 351; *T. Edward Ritter*, 11 T.C. 234, affd. 174 F. 2d 377; *Elwin S. Bentley*, 14 T.C. 228, affd. 184 F. 2d 668. The factual situation here can-

not be satisfactorily distinguished from those in the cited cases and the rationale employed therein is equally apposite here whether we consider the trust created by E. Royce, or Eunice individually, as the entity involved. On the other hand, Thomas H. Brodhead, 18 T.C. 726, affd., 210 F. 2d 652; and Theodore D. Stern, 15 T.C. 521, cited and relied upon by petitioners, are clearly distinguishable on their facts and are of no application here.

There was no substantial change made in the economic position of E. Royce or in the management and control of the Seattle partnership. The capital donated by E. Royce to himself as trustee and then, in turn, to the Seattle partnership was part of that which he had previously employed in the business. The conduct of the business remained unchanged. Under the trust instrument, E. Royce retained broad powers as trustee to control, manage and invest the trust corpus as he should see fit. He kept substantially the same control over the property as he had previously exercised. The income of the trust was to be accumulated or distributed to Eunice as he, in his sole discretion, saw fit. The fact is that a very small percentage of the earnings distributed to the trust was ever distributed to Eunice or invested in Governmental or other conventional securities for her. The bulk of such distributions, after they were applied in payment of taxes, was "loaned" to or "invested" by E. Royce in various projects in which he was interested with no more apparent restraint than there would have been had the trust never been declared.

Respondent's determination as to this point is sustained.

### Issue 6 Findings of Fact

The Portland partnership reported the sale of 76 used taxicabs in the capital gains section of its income tax return for 1947. The cabs sold were certain model 1941 and 1942 Plymouth sedans which had been used by the partnership during the war period. The cabs were repainted and prepared for sale to the public in the garage of the partnership.

Niederkrome, the accountant for the Portland partnership, reported used cab sales in the Monthly Car Record on the basis of information furnished him by E. Royce. E. Royce was actively in charge of used cab sales in 1947. In accounting to the partnership, E. Royce followed the practice of turning over to Niederkrome an amount of currency representing the net proceeds from a sale, together with information identifying the cab by company and motor number. Information concerning the name of the purchaser, the price paid by the purchaser, the amount of commission or any other expense of sale was not furnished to Niederkrome. The amounts shown by Niederkrome on the records and returns of the partnership represented net figures or the balances of proceeds which remained from sales after E. Royce had deducted commission, expenses and other items known only to him.

E. Royce sold at least 29 cabs in 1947 through James D. Hamilton, used car dealer, Portland, Oregon. Although E. Royce would always accept checks,

both Hamilton and E. Royce preferred to deal in cash, and the payments made by Hamilton were mostly in cash. Frequently it was necessary for Hamilton to cash his own checks, so as to enable him to make payment to E. Royce in currency. E. Royce paid Hamilton a commission of \$100 for every cab sold by him. This arrangement was terminated in April 1949. Hamilton kept records consisting primarily of "deal" envelopes on which information concerning each cab was shown, including motor number, make and model of car, certificate of title, purchaser, sales price and the amount paid to E. Royce. The amount paid to E. Royce was shown as a net figure on the records, that is, after commission and other expenses, if any, were deducted from the sales price. The deal envelopes kept by Hamilton were examined by respondent's agents. They disclosed 29 cab sales, and complete information was available concerning 14 cabs. These records were subsequently destroyed or lost.

Pertinent data concerning the 14 cabs sold on consignment through Hamilton follows:

Cab No.	Net Payment to E. Royce	Amount Reported by Partnership
77	\$ 795.00	\$ 700.00
16	800.00	695.00
67	800.00	700.00
37	800.00	600.00
56	700.00	625.00
96	850.00	650.00
48	845.00	665.00

Cab No.	Net Payment to E. Royce	Amount Reported by Partnership
95	800.00	690.00
17	895.00	690.00
94	895.00	690.00
22	895.00	650.00
64	895.00	695.00
69	895.00	695.00
50	775.00	700.00
<hr/>		<hr/>
Total....	\$11,640.00	\$9,445.00

E. Royce sold at least 47 cabs in 1947 to purchasers other than Hamilton. Of these sales the examining officers were able to trace 14 to the purchasers. E. Royce sold 8 cabs through his salesman, Reed Lovelace, who received a commission for each cab sold. The remaining 6 cabs were sold to purchasers on the floor of the partnership garage.

Johnson Auto Company, a partnership engaged in the used car business, Portland, Oregon, purchased 6 cabs. Payment was made with 4 checks payable to Reed Lovelace. Check Nos. 118 and 427 in the amounts of \$725 and \$1,500, respectively, were endorsed by Lovelace to Yellow Cab Company. Check No. 443, in the amount of \$2,550, was endorsed in blank by Lovelace to E. Royce. Check No. 442, in the amount of \$75, was in payment of Lovelace's commission and was cashed by him. Leo Overroedder purchased 2 cabs. Payment was made by check in the amount of \$1,500 payable to Lovelace and endorsed by him to E. Royce. The remaining 6

sales were made to Ward Motor Company, Ronald McKenzie and William Bieker on the floor of the partnership garage after examination by the purchasers. Ward Motor Company, engaged in the business of selling automobiles in Bend, Oregon, purchased 4 cabs. The purchase was made by W. L. Pierce, sales manager. Payment was made with two checks totaling \$3,200 payable to Pierce, endorsed by him to E. Royce. Bieker, a school teacher, Estacada, Oregon, and McKenzie, a police detective, Portland, Oregon, each purchased a cab. Bieker purchased his from the shop foreman. The cab sold to McKenzie was repainted and had new bumpers installed. Bieker paid by check in the amount of \$900, payable to Yellow Cab Company. McKenzie paid \$900 in currency to Yellow Cab Company.

Pertinent data concerning the foregoing 14 cabs are as follows:

Cab No.	Purchaser	Sales Price per Purchaser	Amount Reported by Partnership
54	Johnson Auto Co.	\$ 700.00	\$ 625.00
61	Johnson Auto Co.	725.00	650.00
75	Johnson Auto Co.	725.00	650.00
59	Johnson Auto Co.	850.00	665.00
73	Johnson Auto Co.	850.00	665.00
76	Johnson Auto Co.	850.00	690.00
62	Leo Overroedder	750.00	650.00
86	Leo Overroedder	750.00	650.00
18	Ward Motor Co.	800.00	700.00
42	Ward Motor Co.	800.00	700.00
33	Ward Motor Co.	800.00	700.00
85	Ward Motor Co.	800.00	700.00
23	Wm. E. Bieker	900.00	700.00
34	Ronald E. McKenzie	900.00	625.00
<hr/>			
Total		\$11,200.00	\$9,370.00

E. Royce concluded in 1949 that he had also failed to account to the Portland partnership for cab sales in the amount of \$14,100. Of that amount, E. Royce received \$5,100. The remaining \$9,000, relating entirely to sales made in 1948, he has never received from Hamilton. The examining agents were unable to trace the sales, or to allocate them properly according to the year or years in which made, but took them into account in arriving at the estimated understatement for the year 1947 of \$15,000. One year later, on April 6, 1950, E. Royce turned over the above-mentioned \$5,100 to Niederkrome with instructions to record it on the books of the partnership. Niederkrome debited the amount of \$5,100 to the cash journal and credited a like amount to an account No. 5091 entitled "Depreciation Adjustment." E. Royce has never accounted to the partnership for the remaining \$9,000 in cab sales, and these sales remain unrecorded on the partnership books and unreported in its tax returns.

The sales of used taxicabs by the Portland partnership in 1947 were understated in the net aggregate amount of \$4,525.

### Opinion

This issue involves Docket Nos. 51527 and 51528. The question in dispute is whether the Portland partnership understated its reported sales of used taxicabs in the year 1947 and, if so, the amount thereof. Respondent determined that there was

such understatement and in the amount of \$15,000.

Petitioners attack respondent's action as being no more than an arbitrary estimate based upon an equally arbitrary assumption having no real basis in fact. Petitioners would thus have us expunge the deficiency determined by respondent in its entirety, under the rule of *Helvering v. Taylor*, 293 U.S. 507. In the alternative, while emphatically denying any understatement, petitioners maintain that if there was such, it could in no event have exceeded \$2,825.

Respondent admits that the actual amount of understatement determined by him was an estimated sum computed on a basis of an average understatement of \$200 for each of the 76 cabs sold by the Portland partnership in 1947. The average thus used and the total understatement determined were arrived at, says respondent, after the sales of 28 cabs, the only ones concerning which any records could be found, were analyzed and evidence bearing upon the \$14,100 in cab sales admittedly unaccounted for by E. Royce was "taken into account."

The facts found on this record show clearly that the difference in the amount received for the 28 cabs, the sales of which were analyzed by respondent, and the amounts recorded and reported by the Portland partnership averaged substantially less than the \$200 used by respondent in arriving at his determination. In this connection, petitioners have adduced evidence showing that approximately \$100 per cab sold was paid out by way of commissions

to those effecting the sales; that on many occasions other amounts were spent for repainting and repairing the cabs sold; and that it was the standard practice of the Portland partnership to record and report only the net amounts realized from these sales. It seems clear, however, that on several sales all such expenses were deducted prior to any payment being made to the Portland partnership and there was a further write-down in the amount reported.

With respect to the \$14,100 of unaccounted for sales, we have found that \$9,000 thereof has never been received by E. Royce or the Portland partnership but still remains unpaid and that, in any event, such amount represents sales consummated entirely in 1948. As to the remaining \$5,100, the receipt of which by E. Royce is admitted, there is no evidence specifically showing what part is properly allocable to 1947 sales, but a fair inference to be drawn from all the testimony bearing on the point is that some portion of the \$5,100 in question does in fact properly belong to sales effected in that year.

Thus, in recapitulation, while we agree with petitioners that respondent's determination is excessive in amount, we do not agree that the determination of understatement of 1947 sales is, in itself, on the record made, without foundation in fact.

Viewing all the evidence and considering all inferences therefrom, we have come to the conclusion that the Portland partnership's sales of used taxi-

cabs in 1947 were understated in the aggregate amount of \$4,525. Accordingly, we have so found as a fact and here so hold.

Decisions will be entered under Rule 50.

Served and Entered Nov. 16, 1956.

---

The Tax Court of the United States  
Washington

Docket No. 51491.

FRED C. NIEDERKROME,                      Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

**DECISION**

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the year 1945 there is a deficiency in income tax in the amount of \$32,348.48 and in addition to tax (Sec. 294(d)(2), Internal Revenue Code of 1939) in the amount of \$1,940.07.

Entered April 2, 1957.

[Seal]      /s/ ERNEST H. VAN FOSSAN,  
                    Judge.

Served and Entered April 3, 1957.

The Tax Court of the United States  
Washington

Docket No. 51526.

E. ROYCE and DORA F. ROYCE,  
Petitioners,  
v.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

**DECISION**

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the years 1948 and 1949 there are deficiencies in income tax in the amounts of \$22,191.08 and \$22,453.94, respectively.

Entered April 2, 1957.

[Seal]      /s/ ERNEST H. VAN FOSSAN,  
Judge.

Served and Entered April 3, 1957.

The Tax Court of the United States  
Washington

Docket No. 51527.

EZRA ROYCE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.  
DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the years 1944, 1945, 1946 and 1947, there are deficiencies in income tax and addition to tax (Sec. 294(d)(2), Internal Revenue Code of 1939), as follows:

Year	Deficiency Income Tax	Addition to Tax Sec. 294(d)(2)
1944	\$ 54,875.50	
1945	269,786.82	
1946	127,263.95	
1947	76,771.18	\$4,882.58

Entered April 2, 1957.

[Seal] /s/ ERNEST H. VAN FOSSAN,  
Judge.

Served and Entered April 3, 1957.

The Tax Court of the United States  
Washington

Docket No. 51528.

B. ROYCE,  
v.  
Petitioner,

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the years 1945 and 1947 there are deficiencies in income tax in the amounts of \$17,795.86 and \$5,051.44, respectively.

Entered April 2, 1957.

[Seal] /s/ ERNEST H. VAN FOSSAN,  
Judge.

Served and Entered April 3, 1957.

The Tax Court of the United States  
Washington

Docket No. 51529.

ESTATE OF ISABELLE H. ROYCE, Deceased,  
B. ROYCE, Executor, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the years 1945, 1946 and 1947 there are deficiencies in income tax as follows:

Year	Deficiency
1945	\$29,308.54
1946	9,774.80
1947	5,051.44

Entered April 2, 1957.

[Seal] /s/ ERNEST H. VAN FOSSAN,  
Judge.

Served and Entered April 3, 1957.

The Tax Court of the United States  
Washington

Docket No. 51531.

**ROBERT T. JACOB and AGNES C. JACOB,**  
**Petitioners,**

v.

**COMMISSIONER OF INTERNAL REVENUE,**  
**Respondent.**

**DECISION**

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the year 1945 there is a deficiency in income tax in the amount of \$66,977.56 and an addition to tax (Sec. 294(d) (2), Internal Revenue Code of 1939) in the amount of \$4,035.66.

Entered April 2, 1957.

[Seal] /s/ ERNEST H. VAN FOSSAN,  
Judge.

Served and Entered April 3, 1957.

The Tax Court of the United States  
Washington

Docket No. 51533.

ALBERT L. SCHNEIDER and BERTHA  
SCHNEIDER, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion filed November 16, 1956, the parties herein having filed an agreed computation of tax on March 27, 1957, it is

Ordered and Decided: That for the years 1945, 1948 and 1949, there are deficiencies in income tax and addition to tax (Sec. 294(d)(2), Internal Revenue Code of 1939), as follows:

Year	Deficiency Income Tax	Addition to Tax (Sec. 294(d)(2))
1945	\$21,157.87	\$1,102.38
1948	1,738.04	
1949	555.06	

Entered April 2, 1957.

[Seal] /s/ ERNEST H. VAN FOSSAN,  
Judge.

Served and Entered April 3, 1957.

In The United States Court of Appeals  
For The Ninth Circuit

Tax Court Docket No. 51491

FRED C. NIEDERKROME, Petitioner,

V.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## PETITION FOR REVIEW

Fred C. Niederkrome, by his attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and deciding that there is a deficiency in petitioner's income tax for the calendar year 1945.

The controversy presents the question whether any amount paid in 1945 by Oregon Motor Stages to L. R. Bentson, in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, or any incidental disbursements paid by Oregon Motor Stages constituted a taxable dividend to petitioner.

Petitioner is an individual residing in Portland, Oregon. Petitioner filed his income tax return for the period here involved with the Collector of Internal Revenue for the District of Oregon at Port-

land, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioner files this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed July 1, 1957.

---

[Title of Court of Appeals and Tax Court Docket No. 51526.]

#### PETITION FOR REVIEW

E. Royce and Dora F. Royce, by their attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petition the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and deciding that there is a deficiency in petitioners' income taxes for the calendar years 1948 and 1949.

The controversy presents the question whether during the years in issue petitioners were taxable with respect to the income of a partnership, doing business as Yellow Cab Company in Seattle, Washington, which was distributable to a trust for the

benefit of Eunice M. Royce, the daughter of petitioners.

Petitioners are husband and wife residing in Portland, Oregon. Petitioners filed their income tax returns for the periods here involved with the Collector of Internal Revenue for the District of Oregon at Portland, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioners file this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioners.

[Endorsed]: T. C. U. S. Filed July 1, 1957.

---

[Title of Court of Appeals and Tax Court Docket  
No. 51527.]

#### PETITION FOR REVIEW

Ezra Royce, by his attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and deciding that there is a deficiency in petitioner's income tax for the calendar years 1944 through 1947.

The controversy presents the following questions: (1) whether any amount paid in 1945 by Oregon Motor Stages to L. R. Bentson, in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, or any incidental disbursements paid by Oregon Motor Stages constituted a taxable dividend to petitioner; (2) whether during the years in issue petitioner was taxable with respect to the income of a partnership, doing business as Yellow Cab Company in Portland, Oregon, which was distributable to Dora F. Royce, the wife of petitioner; (3) whether during the years in issue petitioner was taxable with respect to the income of a partnership, doing business as Yellow Cab Company in Seattle, Washington, which was distributable to the said Dora F. Royce; (4) whether during the years in issue petitioner was taxable with respect to the income of a partnership, doing business as Yellow Cab Company in Seattle, Washington, which was distributable to a trust for the benefit of Eunice M. Royce, the daughter of petitioner; and (5) whether the sum of \$20,000 disbursed by Hippodrome Amusement Company to petitioner in 1945 was taxable to him as a dividend.

Petitioner is an individual residing in Portland, Oregon. Petitioner filed his income tax returns for the periods here involved with the Collector of Internal Revenue for the District of Oregon at Portland, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioner files this petition pursuant to the pro-

visions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed July 1, 1957.

---

[Title of Court of Appeals and Tax Court Docket No. 51528.]

### PETITION FOR REVIEW

B. Royce, by his attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and deciding that there is a deficiency in petitioner's income tax for the calendar year 1945.

The controversy presents the question whether any amount paid in 1945 by Oregon Motor Stages to L. R. Bentson, in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, or any incidental disbursements paid by Oregon Motor Stages constituted a taxable dividend to petitioner.

Petitioner is an individual residing in Santa Barbara, California. He resided in Vancouver, Washington immediately prior to establishing his said present residence in California. Petitioner filed his income tax return for the period here involved with the Collector of Internal Revenue for the District

of Washington at Tacoma, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioner files this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed July 1, 1957.

---

[Title of Court of Appeals and Tax Court Docket No. 51529.]

### PETITION FOR REVIEW

The Estate of Isabelle H. Royce, deceased, B. Royce, Executor, by its attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and deciding that there is a deficiency in income tax of deceased Isabelle H. Royce for the calendar year 1945.

The controversy presents the question whether any amount paid in 1945 by Oregon Motor Stages to L. R. Bentson, in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, or any incidental disbursements paid by Oregon Motor

Stages constituted a taxable dividend to deceased Isabelle H. Royce.

Petitioner is an estate. B. Royce, the executor of the said estate, resides in Santa Barbara, California. He resided in Vancouver, Washington, immediately prior to establishing his said present residence in California. Deceased Isabelle H. Royce filed her income tax return for the period here involved with the Collector of Internal Revenue for the District of Washington at Tacoma, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioner files this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed July 1, 1957.

---

[Title of Court of Appeals and Tax Court Docket No. 51531.]

#### PETITION FOR REVIEW

Robert T. Jacob and Agnes C. Jacob, by their attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petition the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and

deciding that there is a deficiency in petitioner's income tax for the calendar year 1945.

The controversy presents the question whether any amount paid in 1945 by Oregon Motor Stages to L. R. Bentson, in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, or any incidental disbursements paid by Oregon Motor Stages constituted a taxable dividend to petitioners.

Petitioners are husband and wife residing in Portland, Oregon. Petitioners filed their income tax return for the period here involved with the Collector of Internal Revenue for the District of Oregon at Portland, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioners file this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioners.

[Endorsed]: T.C.U.S. Filed July 1, 1957.

---

[Title of Court of Appeals and Tax Court Docket No. 51533.]

#### PETITION FOR REVIEW

Albert L. Schneider and Bertha Schneider, by their attorneys Louis Eisenstein, Randall S. Jones and Eberhard P. Deutsch, hereby petition the

United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on April 2, 1957, ordering and deciding that there is a deficiency in petitioners' income tax for the calendar year 1945.

The controversy presents the question whether any amount paid in 1945 by Oregon Motor Stages to L. R. Bentson, in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, or any incidental disbursements paid by Oregon Motor Stages constituted a taxable dividend to petitioners.

Petitioners are husband and wife residing in Clackamas County, Oregon. Petitioners filed their income tax return for the period here involved with the Collector of Internal Revenue for the District of Oregon at Portland, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Petitioners file this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

/s/ LOUIS EISENSTEIN,  
/s/ RANDALL S. JONES,  
/s/ EBERHARD P. DEUTSCH,  
Counsel for Petitioners.

[Endorsed]: T.C.U.S. Filed July 1, 1957.

[Title of Tax Court and Docket Nos. 51491, 51526,  
51527, 51528, 51529, 51531, 51533.]

### CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents 1 to 43 inclusive, constitute and are all of the original papers on file in my office as called for by the Designation of Record on Review, except the original exhibits which are separately certified, in the cases before the Tax Court of the United States docketed at the above numbers and in which the petitioners in the Tax Court cases have filed petitions for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court cases, as the same appear in the official docket in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 9th day of September, 1957.

[Seal]      /s/ HOWARD P. LOCKE,  
Clerk, Tax Court of the  
United States.